Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

MARIA F. GOODSON and ALEXANDROS F. GOODSON,

Petitioners,

versus

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does the Fifth Circuit's refusal to consider petitioners' third party claim to RICO forfeited property in light of this Court's decision in *Cleveland v. United States*, 531 U.S. 12 (2000), violate this Court's order granting petitioners' original application for certiorari (*Goodson v. United States*, 531 U.S. 987 (2000))?

Whether federal courts must apply, or can disregard, applicable state law principles in identifying an affected party's ownership interest in property sought to be forfeited under the RICO statute?

LIST OF PARTIES

The following were parties to the proceedings in the United States Court of Appeals for the Fifth Circuit:

1. Maria F. Goodson *(defendant, forfeiture intervenor, appellant, cross-appellee)*
2. Alexandros F. Goodson *(forfeiture intervenor, appellant)*
3. Fred H. Goodson *(defendant, appellant)*
4. Carl W. Cleveland *(defendant, appellant)*
5. United States of America *(plaintiff, appellee, cross-appellant)*

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Maria F. Goodson and Alexandros F. Goodson respectfully request that this Court issue a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit entered on April 9, 2001.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit, refusing to remand petitioners' forfeiture intervention claim to the District Court to address the effect on that claim of this Court's decision in a related case, *Cleveland v. United States*, 531 U.S. 12 (2000), is unreported and is reproduced in the Appendix at A.1a.[1] The Fifth Circuit's denial of petitioners' request for panel reconsideration of its refusal to remand or, alternatively, for direct consideration by the panel of petitioners' forfeiture intervention claim is unreported and is reproduced at A.3a. The Fifth Circuit's decision remanding other aspects of the related criminal proceedings, convictions, sentences and forfeitures to the District Court for consideration in light of *Cleveland* is unreported and is reproduced at A.5a. This Court's order granting petitioners' original application for certiorari and remanding this case to the Fifth Circuit to determine the effects of *Cleveland* is reported at 531 U.S. 987 (2000) and is reproduced at A.7a. The Fifth Circuit opinion from

[1] "A" denotes the appendix to this petition; "R" the appeal record in the Fifth Circuit; and "T" the trial transcript.

which petitioners and other parties first applied to this Court for certiorari is reported at 182 F.3d 296 (5th Cir. 1999) and is reproduced at A.8a. The District Court's original forfeiture order and its subsequent order denying petitioners' forfeiture intervention claim are both unreported and are reproduced at A.60a and A.52a, respectively.

JURISDICTION

The decision of the United States Court of Appeals for the Fifth Circuit was issued on April 9, 2001. The Court of Appeals denied petitioners' request for rehearing on July 17, 2001. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Applicable provisions of the RICO criminal forfeiture statute, 18 U.S.C. §1963, are set forth in the Appendix at A.90a.

STATEMENT OF THE CASE

1. Factual Background

In early 1992, the Louisiana legislature enacted a law permitting the operation of video poker machines at certain business establishments, including truck stops. Fred Goodson and his family had been in the truck stop business in Slidell, Louisiana, for 20 years, operating one of

the largest truck stops in the southeastern United States. Goodson, a successful businessman who came from an underprivileged background, had started several family businesses over the years and had made his adult children, Maria and Alex, full or part owners of a number of them. Goodson decided to branch out into the recently legalized video poker business and the Goodsons formed a limited partnership, Truck Stop Gaming, Ltd. ("TSG"), to participate in the video poker business at their Slidell truck stop and, potentially, other truck stop locations.

Alex and Maria Goodson executed a limited partnership agreement making each of them a 49% owner of TSG. A separate corporation, owning the remaining 2% of TSG, was formed to serve as general partner. Alex and Maria each owned 50% of its stock. The TSG partnership agreement and related documents were filed with the Louisiana Secretary of State, as required by law for the creation of limited partnerships. As head of the family and an experienced businessman, Fred Goodson served as TSG's general manager, controlling and overseeing TSG's operations as he controlled and oversaw the operations of several other family businesses.[2]

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[2] In addition to their ownership interests in various family businesses, Alex and Maria each went to work in one of them. At the time of TSG's formation in 1992, Alex was 28 years old and managed several fast food restaurants owned and operated by the Goodsons. In the fall of 1993, a year and a half after TSG's formation, Maria, who had just finished college, began managing TSG's video poker facility at the Slidell truck stop.

The Goodsons formed TSG with the help of attorney Carl Cleveland and other members of his law firm, Cleveland, Barrios, Kingsdorf & Casteix. The law firm had represented Fred Goodson in prior litigation and continued to represent the Goodson family in various matters, some related and others unrelated to TSG and its business development activities. Members of the Cleveland firm also assisted the Goodsons in preparing and submitting TSG's original gaming license application to the State of Louisiana.

In addition to providing legal assistance, the Cleveland firm, along with Fred Goodson, loaned Maria and Alex the start-up capital for TSG. These loans, each in the amount of $245,000, were evidenced by promissory notes, payable on demand and bearing interest at 10% per annum. The law firm members anticipated that, at some time in the future, the firm either would be repaid its loan as well as legal fees for work performed on behalf of TSG or would be allowed by the Goodsons to convert the loan and fees to an ownership interest in the company.

Louisiana required video poker license applicants to undergo an investigation in which state officials determined whether owners and persons exercising significant influence over the business operations of a potential licensee were suitable for licensing. The state used the identification of and information about such individuals provided on license applications to investigate and make its suitability determinations. Consistent with the terms of the TSG partnership agreement, the license application package submitted on behalf of TSG identified Alex and Maria as the owners of TSG. It also disclosed the fact that all the initial capital of the partnership had been loaned

to Alex and Maria by Fred Goodson and the Cleveland firm. And prominently and in more than one place, it disclosed that Fred Goodson acted as general manager of the business and controlled its operations. These disclosures exposed each of the Goodsons, as well as Carl Cleveland and his partners in the law firm, to suitability investigation by the Louisiana State Police. The State Police actually performed a suitability investigation of Fred, Maria and Alex Goodson and found each of them suitable for licensing.[3] In 1993, 1994 and 1995, the State Police approved license renewal applications from TSC. Each of these applications contained essentially the same information about ownership and control as the original 1992 license application.

2. Procedural History

a. Proceedings in District Court

In July, 1996, as a result of a federal investigation of alleged corruption involving Louisiana legislators and individuals involved in the gaming industry, a federal grand jury charged Maria Goodson, her father Fred Goodson, family lawyer Carl Cleveland, the family's accountant and two state legislators in a multi-count indictment with a variety of offenses ranging from racketeering and racketeering conspiracy to mail fraud, illegal gambling, money laundering, tax conspiracy, aiding and abetting a false tax return and interstate communications

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[3] T. pp. 1003-1008.

in aid of racketeering.[4] The government subsequently named Alex Goodson as an unindicted co-conspirator.

Most of the charges against the Goodsons, their attorney and their accountant were unrelated to any allegations of political corruption and instead focused on the establishment, licensing and operation of TSG. The four mail fraud counts in the indictment corresponded to the original TSG gaming license application in 1992 and the three subsequent annual renewal applications in 1993, 1994 and 1995. The mail fraud counts were also charged as predicate criminal acts in support of the RICO and RICO conspiracy counts.[5] The government charged that the defendants had committed mail fraud by establishing TSG in the name of Alex and Maria in order to induce the State of Louisiana to grant and annually renew TSG's video poker gaming license which, the government claimed, TSG would not have acquired or been able to renew had its license applications revealed the identity and interests in TSG of its so-called "true owners," Fred Goodson and Carl Cleveland. Despite the disclosure on TSG's original application of the start-up loans to Alex and Maria by Fred Goodson and the members of the Cleveland firm and despite the further prominent disclosure of Fred Goodson's management of and control over TSG – which disclosures exposed each of these

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[4] The ICAR counts were related to bribery allegations against the defendants and the two state legislators.

[5] The other RICO predicate acts charged in the indictment included counts of money laundering, illegal gambling and interstate communications in aid of racketeering.

individuals to a suitability investigation – and, inexplicably, despite the fact that Fred Goodson was actually investigated and found suitable for licensing, the government's theory of crime was that Fred Goodson and Carl Cleveland would not have met licensing suitability requirements because of past financial problems and the state was therefore defrauded into issuing TSG a gaming license by concealment of their alleged ownership interests.

After a five week trial and seven days of deliberation, the jury convicted Maria Goodson of one count of mail fraud in connection with TSG's 1995 license renewal application, but acquitted her of all other counts, including the other mail fraud counts related to the earlier license applications and the RICO and RICO conspiracy counts. The jury convicted Fred Goodson and Carl Cleveland of two counts each of mail fraud, in connection with the 1994 and 1995 TSG gaming license renewal applications, and of RICO and RICO conspiracy.[6]

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[6] The jury also convicted both Fred Goodson and Cleveland of several money laundering counts. These counts were based on the notion that because mail fraud resulted in the illegal procurement of TSG's gaming license, certain transactions involving TSG revenues constituted money laundering of illegally obtained revenues. In addition, Fred Goodson was convicted of three counts of interstate communications in aid of racketeering and Cleveland was convicted of tax conspiracy and aiding and abetting a false tax return. Both men were acquitted on other counts, including the first two mail fraud counts relating to the 1992 and 1993 TSG license applications, and all the defendants were acquitted of operating TSG as an illegal gambling business.

As a result of their RICO and RICO conspiracy convictions, the District Court ordered Fred Goodson and Cleveland to forfeit, among other things, their "interests" in TSG. The District Court's forfeiture order, however, did not precisely describe or identify the nature of the "interests" in TSG to be forfeited by Goodson and Cleveland.[7] A.60a-89a. The order was premised on the Court's general finding that Fred Goodson and Cleveland controlled TSG's operations and finances and that TSG was a part of the racketeering enterprise acquired and operated through a fraudulently obtained and renewed license. A.75a-76a.

Thereafter, Alex and Maria Goodson, as record owners of TSG who had entered into the original limited partnership agreement forming the company, filed a petition intervening in the forfeiture proceedings to assert their ownership interests. After an evidentiary hearing, the District Court denied Alex's and Maria's ownership claims and ruled that Fred Goodson and Carl Cleveland were indeed the "true owners" of TSG, whose ownership interests had been properly forfeited to the government.[8]

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[7] At trial the government had argued two conflicting theories of Fred Goodson's and Carl Cleveland's alleged interest in TSG. The government asserted that Goodson and Cleveland were the actual, albeit hidden, owners of TSG and, inconsistently, that they had pledges and/or options to obtain an ownership interest in TSG at some future time.

[8] In its earlier order denying the defendants' post-verdict motions for judgments of acquittal, the District Court found the evidence sufficient to prove either that Fred Goodson and Carl Cleveland were the true owners of TSG or that there was an agreement among the parties in the form of a pledge or an option that entitled Goodson and Cleveland to acquire

A.52a-59a. The District Court decided to disregard the TSG partnership agreement as determinative of ownership of TSG on the basis that (1) Fred Goodson and Carl Cleveland, rather than Alex and Maria, controlled TSG's business operations and finances, and (2) Alex and Maria did not know or understand enough about their claimed ownership interest in TSG to warrant treating them as owners. A.55a-59a.

b. The Fifth Circuit's Opinion

On appeal, the Fifth Circuit rejected the defendants' challenge to their mail fraud convictions and their contention that a non-existent, unissued state license is not "property" of the state for purposes of the mail fraud statute's requirement that the victim of mail fraud be deprived of property.

The Fifth Circuit also rejected Alex and Maria Goodson's claim of ownership of TSG and upheld its forfeiture, "agreeing with the district court's decision not to allow an obviously false partnership agreement to be used to provide the basis for a claim of interest" under the RICO forfeiture statute. The Court found that the

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ownership of TSG at some indefinite future time. As noted above, the District Court's original forfeiture order held that the government had proved beyond a reasonable doubt that Fred Goodson and Carl Cleveland had a forfeitable interest in TSG, but did not identify whether such interest was a present ownership interest or expected future ownership. A.73a-76a. Fred Goodson and Carl Cleveland were not declared the true owners of TSG until the District Court denied Alex and Maria Goodson's claims of ownership of TSG. A.59a.

District Court had properly disregarded the "sham" partnership agreement, but like the District Court, the Fifth Circuit did not identify what legal principle, either of state or federal law, permitted the treatment of the TSG partnership agreement as a sham, having no legal effect in the determination of the ownership of TSG.

c. Writs of Certiorari and Remand

Carl Cleveland, Fred Goodson and Maria Goodson filed writ applications in this Court seeking reversal of their mail fraud convictions (99-804, 99-939 and 99-1393). In addition, Maria and Alex Goodson sought this Court's review of the lower court rulings upholding the forfeiture of TSG and denying their claim of ownership (99-1393, "Questions Presented"). In *Cleveland v. United States*, this Court held that an unissued state license is not property of the state for purposes of the mail fraud statute's requirement that the victim of mail fraud be deprived of property. The Court reversed the Fifth Circuit's judgment, vacated Carl Cleveland's mail fraud convictions and remanded the case for further proceedings. In light of the *Cleveland* decision, this Court also granted the Goodsons' writ applications and remanded their cases to the Fifth Circuit for further proceedings to determine the effect of *Cleveland*.

Thereafter the Fifth Circuit remanded the cases of Carl Cleveland, Fred Goodson and Maria Goodson to the District Court to determine the effect of the *Cleveland* decision on the convictions, the original forfeiture order and the sentences of the defendants. A.6a. The Fifth Circuit however declined to remand to the District Court or

to consider itself what effect the *Cleveland* decision had on the forfeiture intervention and ownership claims of Alex and Maria Goodson.

On remand the District Court dismissed the mail fraud convictions of Carl Cleveland, Fred Goodson and Maria Goodson, as well as Cleveland's and Fred Goodson's money laundering convictions which had been predicated on the mail fraud counts. The removal of all the predicate acts of mail fraud and money laundering also resulted in the vacation of Cleveland's RICO and RICO conspiracy convictions and forfeitures, including the forfeiture of his alleged interest in TSG. The District Court sustained Fred Goodson's conviction of three ICAR counts and found these counts formed sufficient predicates to sustain Goodson's RICO and RICO conspiracy convictions. Without discussion or analysis, the District Court also sustained Goodson's RICO forfeitures.

REASONS FOR GRANTING WRIT

This petition raises the simple questions of whether this Court's decision in *Cleveland* affected petitioners' forfeiture intervention claim to ownership of TSG and whether the Court's prior grant of petitioners' writ application and remand requires the lower courts to address such effect. On a more general level, the petition also requests the Court to decide whether federal courts are required to apply state law principles to decide the nature of an affected party's property interest in criminally forfeited property or whether federal courts are authorized by the RICO forfeiture provisions to make decisions

regarding ownership of property subject to forfeiture without regard to such principles.

1. The *Cleveland* Decision Eliminated the Basis for the RICO Forfeiture of TSG and Requires the Lower Courts To Recognize Petitioners' Ownership Interest

The District Court's original forfeiture order was premised on the Court's conclusion that the predicate acts supporting the RICO convictions of Fred Goodson and Carl Cleveland and the forfeiture of TSG and other assets were their mail fraud and money laundering convictions. A.61a-62a. This Court's decision in *Cleveland* required reversal of all of those convictions as well as Carl Cleveland's RICO conviction and the forfeiture of his alleged interest in TSG. In addition, even though the District Court found Fred Goodson's ICAR counts sufficient to support his RICO conviction despite the vacatur of his mail fraud and money laundering convictions, the Court made no finding of any relationship between these predicate acts and the assets ordered forfeited. In fact the District Court specifically found in its forfeiture order that such counts were not relevant to the forfeiture issues. A.61a, note 1. In its original forfeiture order, the District Court also recognized that "[in] order to forfeit property under 18 U.S.C. §1963, the government must prove beyond a reasonable doubt a violation of Section 1962 and a relationship between that violation and the property alleged to be forfeitable." (citing *United States v. Pelullo,* 14 F.3d 881, 901 (3d Cir. 1994), rev'd on other grounds, 105 F.3d 117 (3d Cir. 1997) (analyzing Congressional intent concerning the burden of proof in Section

1963 forfeiture cases.) The District Court's original forfeiture order as well as this Court's decision in *Cleveland* require the lower courts to reverse the forfeiture of TSG. The factual predicate of the District Court's 1997 forfeiture order – that TSG's gaming licenses were obtained through mail fraud – no longer obtains and cannot serve as the basis for forfeiture.

Neither Carl Cleveland nor Fred Goodson have asserted a claim to ownership of TSG. There is no dispute between Fred Goodson and Carl Cleveland on the one hand and Alex and Maria Goodson on the other hand over TSG's ownership. Absent a colorable federal claim or basis for the government raising the issue, such as the mail fraud or RICO charges, no longer available because of this Court's *Cleveland* decision, the government does not have standing to challenge in federal court the ownership status of the record owners of TSG, Maria and Alex Goodson. As previously noted, the relationships of Fred Goodson and Cleveland to TSG were disclosed to the State of Louisiana on TSG's license application, exposing them to suitability investigation. Fred Goodson was in fact investigated by the state and found suitable. As this Court noted in *Cleveland*, Louisiana's video poker regulatory statute vests in the state the authority to impose criminal penalties for violations of the video poker licensing scheme, including in particular the making of false statements in a license application. 531 U.S. 12, 20. The State of Louisiana, having the statutory and regulatory power to investigate and charge, has not challenged the legitimacy of TSG's ownership structure or charged any party with making false statements on TSG's license application regarding ownership.

Since the legitimacy of Alex and Maria Goodson's ownership status with respect to TSG has not been challenged by the State of Louisiana and, as a result of this Court's *Cleveland* decision, is not subject to challenge by the federal prosecutors, this case should be remanded to the lower court for reversal and vacatur of the orders forfeiting TSG to the government and denying Maria and Alex Goodson's forfeiture intervention claim of ownership of TSG.

2. This Court Should Decide the Question of Whether, in a Criminal RICO Forfeiture Proceeding, Federal Courts Must Apply State Law Property Principles to Determine an Affected Party's Property Interest in Property Sought to be Forfeited

This Court should decide whether federal courts must apply, or can disregard, otherwise applicable state law principles in identifying an affected party's ownership interest in property sought to be forfeited under the RICO statute.

Although this Court has not so ruled, lower courts have held that in a federal criminal forfeiture action, ownership interests are defined by state law and the federal forfeiture statutes determine whether the property interests, as so defined, must be forfeited to the government. See, for example, *United States v. 1977 Porsche Carrere*, 946 F.2d 30 (5th Cir. 1991); *County of Oakland v. Vista Disposal, Inc.*, 826 F.Supp. 218 (E.D. Mich. 1993). Because there is no general federal common law of property, a trial court should be required to employ applicable state law principles when deciding the nature of an

affected party's property interest in criminally forfeited property. *County of Oakland v. Vista Disposal, Inc., supra,* at 223.)

Both the Fifth Circuit and the District Court elected to disregard the TSG partnership agreement as indicative of the ownership of TSG. They did so without resort to any legal principles, either of federal or state law. Louisiana law was available to guide them in determining whether or not the partnership agreement could be disregarded in identifying the owners of TSG. For example, Louisiana law permits looking beyond the terms of written instruments in cases of fraud, but requires that at least one party to the instrument be a party to the fraud or at least have knowledge of it or imputed knowledge of it. See Louisiana Civil Code articles 1848, 1956. Most states have similar laws. Thus rather than merely declaring the TSG partnership agreement a "sham," the District Court should have been required to determine whether Alex and Maria Goodson had any knowledge of Fred Goodson and Carl Cleveland's purported fraudulent scheme before stripping them of their legitimate ownership interest in TSG. If they did not, and there is no evidence in the record that they were aware of any illegitimate purpose to be served by putting TSG in their names, then they should not be deprived of their ownership interest as established by the TSG partnership agreement.

This Court should grant certiorari to decide the question of whether, in a criminal RICO forfeiture proceeding, federal courts must apply state law property principles to determine an affected party's property interest in property sought to be forfeited. This is especially important to

protect the legitimate interests of third parties not convicted of any crime giving rise to forfeiture under the RICO statute.

CONCLUSION

For the reasons stated the Petition for Certiorari should be granted.

Respectfully submitted,

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Counsel of Record for Petitioners
Maria F. Goodson and
Alexandros F. Goodson

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-31057

UNITED STATES OF AMERICA

Plaintiff – Appellee-Cross-Appellant

v.

LARRY S BANKSTON; MARIA F GOODSON

Defendants – Appellants-Cross-Appellees

CARL W CLEVELAND; FRED H GOODSON

Defendants – Appellants

No. 98-30471

UNITED STATES OF AMERICA

Plaintiffs – Appellee

v.

MARIA F GOODSON

Defendant – Appellant

ALEXANDROS F GOODSON;
TRUCK STOP GAMING LTD

Intervenors – Appellants

Appeals from the United States District Court
for the Eastern District of Louisiana, New Orleans

(Filed Apr. 9, 2001)

Before KING, Chief Judge, REAVLEY and BENAVIDES, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellants Maria F. Goodson and Alexandros F. Goodson to remand the forfeiture intervention proceeding (case no. 98-30471) to the District Court to address the effect on that proceeding of the Supreme Court's decision in United States v. Cleveland, 531 U.S. ___, 121 S. Ct. 365 (2000), is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-31057

UNITED STATES OF AMERICA

Plaintiff – Appellee-Cross-Appellant

v.

LARRY S BANKSTON; MARIA F GOODSON

Defendants – Appellants-Cross-Appellees

CARL W CLEVELAND; FRED H GOODSON

Defendants – Appellants

No. 98-30471

UNITED STATES OF AMERICA

Plaintiffs – Appellee

v.

MARIA F GOODSON

Defendant – Appellant

ALEXANDROS F GOODSON;
TRUCK STOP GAMING LTD

Intervenors – Appellants

Appeals from the United States District Court
for the Eastern District of Louisiana, New Orleans

(Filed Jul. 17, 2001)

Before KING, Chief Judge, REAVLEY and BENAVIDES, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellants Maria F. Goodson and Alexandros F. Goodson for reconsideration of the court's order entered April 9, 2001, as to case no. 98-30471, is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-31057

UNITED STATES OF AMERICA

Plaintiff – Appellee-Cross-Appellant

v.

LARRY S BANKSTON; MARIA F GOODSON

Defendants – Appellants-Cross-Appellees

CARL W CLEVELAND; FRED H GOODSON

Defendants – Appellants

No. 98-30471

UNITED STATES OF AMERICA

Plaintiffs – Appellee

v.

MARIA F GOODSON

Defendant – Appellant

ALEXANDROS F GOODSON;
TRUCK STOP GAMING LTD

Intervenors – Appellants

Appeals from the United States District Court
for the Eastern District of Louisiana, New Orleans

(Filed Jan. 4, 2001)

Before KING, Chief Judge, REAVLEY and BENAVIDES, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellant Carl W. Cleveland to remand the case to the District Court to address the effect of the Supreme Court's decision on the different counts of conviction and on the forfeiture order and sentence is GRANTED. IT IS FURTHER ORDERED that the cases of Fred Goodson and Maria F. Goodson are also remanded to the District Court for similar consideration.

IT IS FURTHER ORDERED that the alternative motion of appellant Carl W. Cleveland to establish a schedule for submission of briefs concerning the effect of the Supreme Court's decision is DISMISSED AS MOOT.

Supreme Court of the United States

No.
99-939 & 99-1393

FRED H. GOODSON,

Petitioner

v.

UNITED STATES

and

MARIA F. GOODSON and
ALEXANDROS F. GOODSON,

Petitioners

v.

UNITED STATES

The Court reversed the judgment below in *Cleveland v. United States*, 531 U.S. ___ (2000). Therefore, the petitions for writs of certiorari are granted, and the cases are remanded to the United States Court of Appeals for the Fifth Circuit for further proceedings.

November 13, 2000

UNITED STATES OF AMERICA,
Plaintiff-Appellee-Cross-Appellant,

v.

LARRY S. BANKSTON; MARIA F. GOODSON,
Defendants-Appellants-Cross-Appellees,

CARL W. CLEVELAND; FRED H. GOODSON,
Defendants-Appellants.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARIA F. GOODSON,
Defendant-Appellant,

ALEXANDROS F. GOODSON; TRUCK STOP GAMING LTD.,
Intervenors-Appellants.

Nos. 97-31057, 98-30471.

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

July 21, 1999.

Stephen A. Higginson, Asst. U.S. Atty., New Orleans, LA, for United States.

Lewis O. Unglesby, Karl J. Koch, Unglesby & Koch, Baton Rouge, LA, for Bankston.

William H. Jeffress, Jr., Paul Francis Enzinna, Miller, Cassidy, Larroca & Lewin, Washington, DC, for Goodson.

Paul Mogin, Robert B. Barnett, Joseph G. Petrosinelli, Williams & Connolly, Washington, DC, Anthony J. Marabella, Jr., Baton Rouge, LA, for Cleveland.

Katherine G. Wheeler, Steffes & Macmurdo, Baton Rouge, LA, Richard George Crane, Nashville, TN, for Goodson.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before KING, Chief Judge, and REAVLEY and BENAVIDES, Circuit Judges.

BENAVIDES, Circuit Judge:

Larry Bankston ("Bankston"), Fred Goodson, Maria Goodson, and Carl Cleveland ("Cleveland") appeal from their June 27, 1997, convictions and October 15, 1997, sentences for various offenses related to criminal activity in the Louisiana video poker industry. Fred Goodson and Cleveland, along with Alex Goodson, Maria Goodson, and Truck Stop Gaming, Inc. ("TSG, Inc."), additionally appeal the district court's judgment of forfeiture of Truck Stop Gaming, Ltd. ("TSG, Ltd.") and TSG, Inc. as part of the RICO enterprise. The Government cross-appeals, challenging the district court's calculation of both Bankston's and Maria Goodson's sentences. For the reasons set forth below, we affirm the Appellants' convictions and sentences and the forfeiture of TSG, Ltd. and TSG, Inc.

I. Background

Fred Goodson and his family had been in the truck stop business in Slidell, Louisiana for 20 years. In early 1992, the Goodson family formed TSG, Ltd. and its corporate partner, TSG, Inc., in order to participate in the video poker business at their Slidell truck stop. Fred Goodson

and Carl Cleveland's law firm, Cleveland, Barrios, Kingsdorf & Casteix ("CBK&C"), loaned Goodson's adult children, Alex and Maria, the start-up capital for TSG, Ltd.[1] With the legal assistance of CBK&C, a partnership *in commendam* was established. Alex and Maria each owned 49% of TSG, Ltd. as limited partners.[2] TSG, Inc. owned the remaining 2% as general partner.[3] Fred Goodson managed TSG, Ltd.

CBK&C also helped the Goodsons prepare and submit to the Louisiana State Police applications for an owner/operator's gaming license for TSG, Ltd. The gaming applications required partnerships seeking a license to identify their partners, to submit personal financial statements for all partners, and to affirm that the listed partners were the sole beneficial owners, that no partner had an arrangement to hold his interest as "an agent, nominee or otherwise," or a present intention to transfer any interest in the partnership at a future time. The initial application submitted on behalf of TSG, Ltd. identified Maria and Alex Goodson as the limited partners and TSG, Inc. as the general partner. The application listed no other persons or entities as having any ownership interest in TSG, Ltd. The initial license application did disclose, however, that Fred Goodson and CBK&C had loaned Maria and Alex all initial capital. That same application also identified Fred Goodson as general manager of the

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[1] Those loans were secured by promissory notes, payable on demand, with 10% annual interest.

[2] TSG, Ltd.'s Agreement of Partnership was signed by Alex and Maria and filed with the Louisiana Secretary of State.

[3] Alex and Maria owned equal shares of TSG, Inc.

business. TSG, Ltd. submitted renewal applications in 1993, 1994, and 1995, which also listed no additional ownership interests.[4]

In 1994, as a part of an unrelated federal investigation of alleged corruption involving Louisiana legislators, the F.B.I. obtained court authorization to conduct electronic surveillance of the office of Louisiana State Senator Larry Bankston. The authorization was based on a series of consensually recorded conversations that took place in September and October 1994 between Bankston and Robert Miller, a cooperating witness. According to the FBI, the Bankston-Miller conversations indicated that Bankston was engaged in a scheme to extort an interest in a casino proposed by the Jena Choctaw tribe, in exchange for his influence in ensuring government approval of the casino.

During the course of its electronic surveillance – limited to the interception of communications concerning the alleged Jena Choctaw scheme – the FBI recorded a conversation between Bankston and Fred Goodson. In that conversation, the two men discussed, in detail, Goodson's truck stop business. Neither man mentioned the Jena Choctaw scheme. Approximately 20 minutes into their discussion, Goodson broached the subject that would form the basis for the present multi-party, multi-count indictment. Armed with the recording of Bankston

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[4] In August 1994, Maria Goodson executed a "Sale of Partnership Interest and Pledge Agreement," which conveyed to Benny Rayburn, the adult son of co-defendant Benjamin "Sixty" Rayburn, a 4.99% interest in TSG, Ltd. Rayburn's 4.99% interest was not disclosed in any renewal application.

and Goodson's 44-minute conversation, the FBI obtained court authorization for electronic surveillance on Goodson's home and businesses.

On October 4, 1996, the Government charged now former Louisiana State Senators Benjamin "Sixty" Rayburn and Larry Bankston; video poker entrepreneur Fred Goodson; his daughter, Maria Goodson; family attorney, Carl Cleveland; and the family's accountant, Joe Morgan, with a combination of racketeering, racketeering conspiracy, mail fraud, conducting an illegal gambling business, money laundering, tax conspiracy, false declaration under penalty of perjury, aiding and abetting a false declaration under penalty of perjury, and interstate communications in aid of racketeering.[5] Most of the charges against the Goodsons, Cleveland, and Joe Morgan related to the establishment, licensing, and operation of TSG, Ltd. The Government alleged that the defendants had schemed to defraud state regulators in obtaining video poker licenses for TSG, Ltd., and to obtain favorable legislation affecting Louisiana's video poker industry. Specifically, the Government alleged that the defendants obtained a gaming license for TSG, Ltd. in 1992 and renewed it in 1993, 1994, and 1995, by fraudulently concealing the identity of the true owners of the company, Fred Goodson and Carl Cleveland.[6] According to the

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[5] The Government did not indict Fred Goodson's son, Alex Goodson, but subsequently named him an unindicted co-conspirator. Alex Goodson joins the instant action as an intervenor in the forfeiture proceedings.

[6] Alex and Maria Goodson were from inception and remain the record owners of TSG, Ltd. and its corporate general partner, TSG, Inc.

Government, Goodson and Cleveland concealed their ownership in order to avoid the probing inquiry of the State's suitability assessment.

Trial commenced on May 12, 1997, and lasted six weeks. Following more than seven days of deliberation, the jury returned a mixed verdict, finding four of the defendants – Carl Cleveland, Fred Goodson, Maria Goodson, and Larry Bankston – guilty of certain counts.[7] The jury acquitted the remaining two defendants – Senator Rayburn and Joe Morgan – on all counts.

On October 15, 1997, the district court sentenced the four convicted defendants. Both Cleveland and Fred Goodson received terms of imprisonment of 121 months. Maria Goodson received a six-month term of imprisonment to be followed by six months of home detention. Bankston received a 41-month term of imprisonment and a fine of $20,000.

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[7] Cleveland was convicted on one count of RICO, one count of RICO conspiracy, two counts of mail fraud (in connection with the 1994 and 1995 TSG, Ltd. gaming license renewal applications), four counts of money laundering, one count of tax conspiracy, and one count of aiding and abetting the filing of a false tax return. Like Cleveland, Fred Goodson was convicted of one count of RICO, one count of RICO conspiracy, and two counts of mail fraud (in connection with the 1994 and 1995 TSG, Ltd. gaming license renewal applications). The jury additionally convicted Goodson of five counts of money laundering and three counts of the use of interstate communications in aid of state bribery. His daughter, Maria, was found guilty of one count of mail fraud in connection with TSG, Ltd.'s 1995 license renewal application. Former Senator Bankston was found guilty of two counts of committing and/or aiding and abetting interstate communications in aid of racketeering.

The defendants filed timely notices of appeal as to their convictions and sentences. On November 14, 1997, the Government filed a notice of cross-appeal relating to the sentences of Bankston and Maria Goodson.

Following Fred Goodson's and Carl Cleveland's convictions for RICO and RICO conspiracy, the Government sought forfeiture of, *inter alia*, their alleged interests in TSG, Ltd. and TSG, Inc. On August 26, 1997, the district court entered a judgment ordering the forfeiture of TSG, Ltd. and TSG, Inc. The district court noted that the jury's verdict and the evidence in the criminal trial record proved beyond a reasonable doubt that Goodson and Cleveland had an interest in TSG, Ltd. and TSG, Inc. and that those entities were part of the RICO enterprise. On October 21, 1997, the district court entered the final order of forfeiture.

On October 31, 1997, Alex and Maria Goodson, as record owners of TSG, Ltd. and TSG, Inc., filed separate petitions of intervention in the forfeiture proceedings, asserting their ownership interests in the two companies. On February 4, 1998, the district court conducted an evidentiary hearing on their petitions, and on April 15, 1998, the district court denied their claims. The district court ruled that Fred Goodson and Carl Cleveland were the "true owners" of TSG, Ltd. and TSG, Inc. and that their ownership interests had been properly forfeited to the Government. Alex and Maria Goodson and TSG, Inc. appeal from that ruling.

II. Discussion

A. Wiretap Evidence

1. Application Omissions

Fred Goodson and Larry Bankston argue that the district court erred in refusing to suppress the evidence obtained from the Bankston wiretap. Both appellants additionally argue that the district court erred in denying their request for an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

Before trial, Bankston filed a motion to suppress the wiretap evidence. Fred Goodson, Maria Goodson, and Carl Cleveland joined the motion.[8] Bankston contended that the November 25, 1994, affidavit completed by Agent Jones in support of the wiretap application contained fatal omissions and misrepresentations. His motion described an "exculpatory" conversation between Bankston and Miller that had been omitted from the wiretap application and claimed that the FBI told Miller to stop recording after that conversation. Bankston asserted that the false statements and/or omissions were deliberately or recklessly made. He accompanied his motion with an offer of proof including affidavits and sworn testimony.

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[8] On appeal, Maria Goodson and Carl Cleveland cross-incorporate Fred Goodson and Bankston's suppression arguments. However, neither Maria nor Cleveland meets our standing requirements as articulated in *United States v. Scasino*, 513 F.2d 47 (5th Cir.1975). Because we conclude that the district court did not err in admitting the wiretap evidence, we need not consider Cleveland's argument that he has standing despite *Scasino*.

The district court, after hearing arguments by counsel and reviewing submissions, denied Bankston's request for a *Franks* evidentiary hearing. The court found that Bankston had failed to make the requisite showing that the affiant, Agent Jones, had intentionally misled the District Court and tricked the Court into issuing the wiretap authorization and that the omissions were material such that they negated probable cause.

We review de novo the denial of a *Franks v. Delaware* evidentiary hearing. *See United States v. Dickey*, 102 F.3d 157, 162 (5th Cir.1996) (reviewing the denial of a Franks hearing in the context of a search warrant); *United States v. Guerra-Marez*, 928 F.2d 665, 671 (5th Cir.1991) (applying the *Franks* standard and reviewing de novo the decision of the district court to validate a wiretap order). In *Franks v. Delaware*, the Supreme Court held that a defendant is entitled to an evidentiary hearing to contest the validity of a search warrant if he makes a substantial preliminary showing that (1) allegations in a supporting affidavit were a deliberate falsehood or made with a reckless disregard for the truth and (2) the remaining portion of the affidavit is not sufficient to support a finding of probable cause. *See Franks*, 438 U.S. 154, 171, 98 S.Ct. 2674, 2684, 57 L.Ed.2d 667 (1978). We have explained that "even if the defendant makes a showing of deliberate falsity or reckless disregard for the truth by law enforcement officers, he is not entitled to a hearing if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause." *United States v. Privette*, 947 F.2d 1259, 1261 (5th Cir.1991) (quoting *Franks*, 438 U.S. at 171-72, 98 S.Ct. at 2684-85).

We have applied *Franks* to instances of omission where, as here, an affidavit falls squarely within the dictates of 18 U.S.C. § 2518. *United States v. Tomblin*, 46 F.3d 1369, 1377 (5th Cir.1995) (noting that "[o]missions or misrepresentations can constitute improper government behavior"). In such cases of omitted information, the logic of *Privette* holds firm: a defendant is not entitled to an evidentiary hearing if a wiretap authorization would lawfully have issued after correcting the supporting affidavit by supplying any material omissions. Therefore, in determining whether Fred Goodson and Bankston were improperly denied an evidentiary hearing on their motion to suppress, we need only consider Agent Jones's affidavit – corrected to contain the allegedly exculpatory conversation – and determine whether that reconstructed affidavit satisfies the wiretap requirements contained in 18 U.S.C. § 2518.

If the Jones affidavit were revised to include the omitted information, the affidavit would describe conversations suggesting that between September 19 and October 31, 1994, the cooperating witness, Miller, and Bankston had discussed a scheme to exchange Bankston's influence for an ownership interest in the Jena Choctaw casino. In particular, the affidavit would reveal that Bankston had met with Jena Choctaw Chief Jackson several times, had agreed to provide the Jena Choctaw tribe with "political cover," and had been telephoned frequently by Chief Jackson. The affidavit would also state that, in a sixth conversation with Miller on October 31, 1994, Bankston had declared that he was "fini" and that his present intention was "to stay away from . . . this entire thing." The affidavit would additionally include statements

made by Bankston to Miller at the conclusion of that October 31, 1994, conversation expressing Bankston's "willing[ness] to proceed" with the project if "something could be worked out to his satisfaction."

a. Probable Cause

An application for a wiretap must demonstrate probable cause to believe that the target has committed, is committing, or will commit a crime, as well as "probable cause for belief that particular communications concerning that offense will be obtained through such interception." 18 U.S.C. § 2518(3)(a)-(b). We evaluate probable cause utilizing a totality-of-the-circumstances test. *See Dickey*, 102 F.3d at 162. In light of Miller's multiple statements to the FBI that Bankston was negotiating a deal in which he would extort an undisclosed interest in the Jena Choctaw casino, the multiple taped conversations containing statements that corroborated this tip from Miller, and the ambiguity of any exculpatory statements in the October 31 conversation, we find that the reconstructed affidavit would establish sufficient probable cause to authorize electronic surveillance on November 25.[9]

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[9] Our finding of probable cause includes a finding that "particular communications" concerning that offense would have been "obtained through such interception." *See* 18 U.S.C. § 2518(3)(b). The October 31, 1994, conversation between Miller and Bankston in no way undermines probable cause to believe that Bankston would have committed the Jena Choctaw scheme and that particular communications concerning the scheme would occur either in Bankston's office or on his phone.

b. Necessity

Bankston and Goodson also argue that the application failed to meet the dictates of 18 U.S.C. § 2518(3)(c), which requires the Government to show and the issuing judge to find that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(3)(c). The Government "need not prove exhaustion of every conceivable option before a wiretap order may issue." *Guerra-Marez*, 928 F.2d at 671.

Here, the FBI included in its 21-page wiretap application a detailed account of the investigative techniques it had employed in making its case against Bankston. Agent Jones stated in his November 25, 1994, affidavit that the use of electronic surveillance was necessary because Bankston had made it clear to Miller that he would not include him in any potentially incriminating conversations with third parties.[10]

We have affirmed wiretap orders based upon similar affidavits. *See, e.g., United States v. Krout*, 66 F.3d 1420, 1425 (5th Cir.1995) (explaining that the informants or undercover agents could not infiltrate the conspiracy at high enough levels); *United States v. Collins*, 972 F.2d 1385, 1412 (5th Cir.1992) (noting that consensual monitoring

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[10] In his talks with Miller, Bankston had alluded to conversations that he would be having with his stockholder nominee as well as other people in Louisiana whom he had to satisfy out of his five-percent hidden ownership interest in the Jena Choctaw casino.

would be impossible, as it was unlikely that the informant would be present during the illegal activity). Agent Jones's affidavit provides sufficient information to meet the requirements of § 2518(3)(c). The omission of the October 31 conversation does not impact our finding of "necessity," nor does the fact that the FBI failed to inform the issuing court that Miller had been told to cease recording his conversations with Bankston. Regardless of whether Miller continued to record his conversations with Bankston, Miller was unlikely to be present during the talks between Bankston and his Louisiana contacts. Therefore, a need for electronic surveillance existed.

2. Minimization

Bankston and Fred Goodson contest the district court's factual finding that the FBI properly minimized the interception of communications outside the scope of the wiretap order. In particular, Bankston and Goodson dispute the interception of their December 1994 conversation, which included no mention of the Jena Choctaw tribe casino scheme and did not broach the subject of criminal activity until approximately twenty minutes into the conversation. We review determinations of the reasonableness of minimization efforts for clear error. *See United States v. Wilson*, 77 F.3d 105, 112 (5th Cir.1996).

Section 2518 implements "the constitutional mandate . . . that wiretapping must be conducted with particularity," *United States v. Daly*, 535 F.2d 434, 440 (8th Cir.1976) (citation omitted), by requiring electronic surveillance to "be conducted in such a way as to minimize the interception of communications not otherwise subject

to interception." 18 U.S.C. § 2518(5). The Government's efforts to minimize nonrelevant conversations must be "objectively reasonable" in light of the circumstances confronting the interceptor. *Scott v. United States*, 436 U.S. 128, 136-143, 98 S.Ct. 1717, 1723-27, 56 L.Ed.2d 168 (1978); *see also United States v. Hyde*, 574 F.2d 856, 869 (5th Cir.1978) (explaining that the minimization standard applies a test of reasonableness to the particular facts of each case) (citing *Daly*, 535 F.2d at 441). Neither the Fourth Amendment nor 18 U.S.C. § 2515, however, requires government agents to avoid intercepting all nonrelevant conversations when conducting a wiretap investigation. *See Scott*, 436 U.S. at 137-140, 98 S.Ct. at 1723-24.

We consider three factors in deciding the objective reasonableness of efforts to minimize: (1) the "nature and scope of the criminal enterprise under investigation;" (2) the "Government's reasonable inferences of the character of a conversation from the parties to it;" and (3) the "extent of judicial supervision." *Hyde*, 574 F.2d at 869. Here, consistent with our precedent, the district court found that the FBI's efforts to minimize were reasonable in light of the fact that (1) the criminal investigation involved "a potentially wide-ranging conspiracy in which the coconspirators had not been identified;" (2) Goodson reported to Bankston "specific details of Goodson's truck stop business that one would not normally provide to one who was not a participant in the endeavor;" and (3) the issuing court had determined, based on regularly submitted ten-day reports, including the results of interceptions, that the Government was acting in a proper manner.

Bankston reurges statistical analyses he presented to the district court to question the Government's minimization efforts. Bankston's reliance on statistics is unpersuasive. First, the district court rightly pointed out that Bankston's statistics, even if taken as accurate, showed minimization efforts that were reasonable. Second, the Supreme Court has discouraged the use of statistics, explaining that "blind reliance on the percentage of nonpertinent calls intercepted is not a sure guide to the correct answer." *Scott*, 436 U.S. at 140, 98 S.Ct. at 1724.

Goodson argues that the criminal nature of the December 1994 conversation could not have been immediately apparent because the subject of criminal activity was not broached until approximately twenty minutes into the conversation and that, by this point, agents should have already ceased monitoring the conversation. Goodson analogizes an agent's monitoring of communications concerning crimes not the subject of a wiretap order to an officer's seizure of contraband pursuant to the plain view doctrine. Goodson cites *United States v. Johnson*, 539 F.2d 181 (D.C.Cir.1976), in support of his novel plain view analogy. In particular, Goodson points to the following language from *Johnson*: "Like an officer who sees contraband in plain view from a vantage point where he has a right to be, one properly overhearing unexpected villainy need not ignore such evidence." *See id.* at 188. Goodson then attempts to graft onto the *Scott* objective reasonableness inquiry the plain view doctrine's probable cause requirement. He urges us to find that an agent monitoring "windfall" communications must, at the time of the monitoring, have probable cause to

believe that the communication concerns criminal activity.

Caselaw does not support such a probable cause requirement. We are unaware of any case in which an appellate court employed a probable cause analysis to determine whether to suppress non-minimized, "other criminal activity" communications. Moreover, requiring probable cause that a windfall communication itself concerns criminal activity is inconsistent with the objective reasonableness inquiry. Adding a probable cause analysis would require that monitoring agents be more than reasonable in their efforts to minimize. Goodson's approach would require that agents be gifted with "prescience" and the ability to " 'know in advance what direction the conversation will take.' " *United States v. Cox*, 462 F.2d 1293, 1301 (8th Cir.1972) (quoting *United States v. LaGorga*, 336 F.Supp. 190, 196 (W.D.Pa.1971)). Consistent with *Scott*, we conclude that the district court did not commit clear error in determining that the FBI's minimization efforts were objectively reasonable.

B. Choice of Counsel

Fred Goodson argues that the district court erred in denying, on grounds of conflict, his motion to associate Michael Fawer as additional counsel.[11] Goodson complains that the district court's ruling constitutes error in

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[11] Michael Fawer represented Goodson's co-defendant, former Louisiana State Senator Rayburn, through the investigative stage of this case. Fawer assisted Rayburn in responding to three grand jury subpoenas, had discussions with the Government regarding the nature of the charges being considered against Rayburn, and appeared in court on behalf of

light of both his and Rāyburn's knowing waiver of any conflict of interest and the sworn statements averring unawareness of any actual or potential conflict of interest submitted by Michele Fournet (counsel for Goodson), Michael Fawer, and Arthur Lemann.

We review a district court's finding of a conflict of interest for abuse of discretion. *See United States v. Sotelo*, 97 F.3d 782, 791 (5th Cir.1996). Although a district court must "recognize a presumption in favor of petitioner's counsel of choice," "that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict." *Wheat v. United States*, 486 U.S. 153, 164, 108 S.Ct. 1692, 1700, 100 L.Ed.2d 140 (1988). This is true even where a defendant expresses a desire to waive the potential conflict. *See Sotelo*, 97 F.3d at 791.

The crux of Goodson's argument is that the district court's veto of his choice of counsel without finding any "special circumstances" beyond the fact of multiple representation amounts to a per se rule that multiple representation would never be permissible. Goodson contends that such a per se rule contravenes Supreme Court and Fifth Circuit precedent that has recognized the advantages of common defenses. Goodson additionally argues that the four potential areas of conflict elucidated by the

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Rayburn at the initial appearance, as well as later to argue motions.

On November 5, 1996, Fawer withdrew as counsel for Rayburn, and Arthur A. Lemann, III replaced Fawer as counsel for Rayburn. On February 24, 1997, Goodson moved the district court to associate Fawer as additional counsel for him.

district court exist in every case of multiple representation and that appellate courts have regularly found that conflicts do not arise in those contexts.[12]

Goodson's argument is flawed. First, the district court in no way established a per se rule against joint representation. The district court applied the Sixth Amendment and the Supreme Court's *Wheat* analysis to the facts developed at the hearing before the magistrate judge. On the basis of those facts, the district court concluded that institutional interests and interests of the defendant warranted a denial of Goodson's motion to associate Fawer. Second, neither the Supreme Court nor this Circuit has adopted a "special circumstances" test for determinations of conflict in joint representation. Although the Supreme Court's 1980 *Cuyler* decision does include "special circumstances" language, it does so only in discussing when a state court, sua sponte, needs to "initiate inquiries into the propriety of multiple representation." *Cuyler v. Sullivan*, 446 U.S. 335, 346, 100 S.Ct. 1708, 1717, 64 L.Ed.2d 333 (1980). Third, the cases upon which Goodson relies to show that joint representation is permissible despite possible conflicts of interest involve

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[12] The district court outlined four areas of potential conflict: (1) because a plea by Goodson would be adverse to Rayburn's interests, Fawer would have a conflict in advising Goodson regarding plea negotiations; (2) evidence could develop at trial that pitted one defendant's interest against the other's; (3) Goodson's and Rayburn's interests could diverge at sentencing, over issues such as their respective roles in the offense; and (4) because Fawer received confidences from Rayburn, Fawer's cross-examination of Rayburn would be problematic.

claims of ineffective assistance of counsel. In those cases, the courts employed a retrospective, record-based inquiry in order to determine whether an attorney was operating under a conflict of interest. Their findings of "no conflict" are of limited usefulness here, where the district court predicated its denial of the motion to associate counsel on a finding of serious *potential* conflict. Goodson fails to appreciate the distinction between a retrospective inquiry of actual conflict and a prospective inquiry into serious potential conflict.

The evaluation of the facts and circumstances of each case under the *Wheat* standard "must be left primarily to the informed judgment of the trial court." *Wheat*, 486 U.S. at 164, 108 S.Ct. at 1700. The district court made specific findings as to four potential areas of serious conflict. We find that the district court did not abuse its discretion in denying Goodson's motion to associate Fawer.

C. Louisiana Video Poker License as "Property"

Maria Goodson and Attorney Cleveland assert that a Louisiana video poker license is not "property" for purposes of the mail fraud statute, 18 U.S.C. § 1341. Less than two years ago, we reached a contrary conclusion in *United States v. Salvatore*, 110 F.3d 1131 (5th Cir.1997). Bound by our prior decision, we do not revisit this issue.

D. Fair Notice

Maria Goodson and Cleveland argue that, at the time of their mail fraud offenses, they did not have fair notice that the acts charged were crimes. They claim that they

did not have notice (1) that unissued video poker licenses constituted property under the mail fraud statute, and (2) that certain information needed to be reported to the Louisiana State Police on the video poker license applications. We find these arguments devoid of merit.

"The test of whether a statute is unconstitutionally vague so as to deprive fair notice is whether it provides a person of ordinary intelligence a reasonable opportunity to know what is proscribed." *United States v. Brewer,* 835 F.2d 550, 553 (5th Cir.1987). With regard to the first claim, we note that, at the time of the charged conduct, a circuit split existed as to whether or not unissued licenses constituted property for purposes of the mail fraud statute. Although we had not yet ruled on the issue, at least two circuits had found that unissued licenses are property for mail fraud purposes. Accordingly, we conclude that, assuming each to be of ordinary intelligence, Maria Goodson and Cleveland had reasonable opportunity to know that their conduct could be proscribed by the mail fraud statute. *Cf. United States v. Brumley,* 116 F.3d 728, 732 (5th Cir.1997) (en banc) ("Constructions of a statute announced by the Supreme Court or lower courts can give citizens fair warning, even if the cases are not fundamentally similar." (quotation marks omitted)).

We are equally unpersuaded by Maria Goodson and Cleveland's claim that they did not have fair notice that the Louisiana State Police required disclosure of indefinite and contingent plans to acquire an equity interest in a video poker licensee at some unspecified time in the future, or an ownership or other interest in a licensee of less than five percent. The "Affidavit of Full Disclosure" that accompanied the initial and renewal applications

explicitly required that video poker applicants be the "sole beneficial owner of any direct or indirect interest in or to a licensed gaming operation . . . except such as having been reported in writing to the Louisiana State Police." The affidavit required that applicants attest that they had (1) "no agreements or understandings with any other person and no present intent to hold as agent, nominee, associate, third party or otherwise any direct or indirect interest whatsoever in or to the licensed gaming operation" and (2) "no agreements or understandings with any other person and no present intent to transfer at any future time any interest whatsoever. . . . " We find that this language provided a person of ordinary intelligence adequate notice that ownership interests in any amount must be disclosed to the Louisiana State Police. Similarly, we find the "agreement or understanding" language sufficiently broad to include indefinite and contingent plans to acquire equity interests at some unspecified future time. We therefore conclude that Maria Goodson and Cleveland had fair notice.

E. State Law "Ownership" Jury Instructions

Cleveland, Fred Goodson, and Maria Goodson claim that the district court erred in refusing to charge the jury concerning certain state-law concepts of ownership. The district court refused to give the requested instructions because, *inter alia*, the state-law concepts did "not go to the guilt or innocence of the defendants." We review a district court's refusal to provide a requested instruction for abuse of discretion. *See United States v. Pennington*, 20 F.3d 593, 599 (5th Cir.1994). Although we have recognized

the importance of instructing on legal concepts significant to a theory of defense, *see, e.g., United States v. Cavin*, 39 F.3d 1299, 1310 (5th Cir.1994) (reversing a conviction because the court failed to instruct on state ethical rules relevant to an attorney's theory of defense), we have never required that a district court instruct a jury on peripheral concepts that do not directly implicate an essential element of the charged offense.

Cleveland argues that the ownership instructions were directly relevant to both his guilt or innocence and that of Fred and Maria Goodson. According to Cleveland, the critical issue to be decided by the jury was whether TSG, Ltd.'s license applications contained "fraudulent representations or omissions," that is, whether in keeping with the Government's theory of the case, the mailed video poker license applications failed to disclose hidden interests of Fred Goodson and Carl Cleveland in TSG, Ltd., as owners, option holders, or pledge recipients.[13] Cleveland contends that the jury could not fairly decide who owned TSG, Ltd. without knowing whether Goodson or Cleveland had enforceable ownership interests under state law.

We disagree. The jury was instructed to find whether the video poker license applications were fraudulent in so

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[13] The district court instructed the jury that an essential element of mail fraud – distinct from specific intent – is that a defendant knowingly created a scheme to defraud. Such a scheme, according to the district court's instructions, must involve false or fraudulent representations or omission reasonably calculated to deceive persons of ordinary prudence and comprehension.

far as affidavits submitted by Maria and Alex Goodson failed to mention any (1) agreements or understandings with any other persons to hold their interests as a nominee, agent or otherwise, and/or (2) agreements or understandings with any other person and a present intent to transfer at any future time any interest whatsoever in TSG, Ltd. Whether the "agreements or understandings" were enforceable under state law is not relevant to the question of whether Maria and Alex Goodson failed to disclose such arrangements to the Louisiana State Police. Accordingly, we find that the district court did not abuse its discretion in refusing to charge the jury as requested by Appellants. *See Pennington*, 20 F.3d at 600 (explaining that reversal is warranted only if the requested instruction (1) was a substantially correct statement of the law, (2) was not substantially covered in the charge as a whole, and (3) concerned an important issue in the trial).

Fred Goodson, Maria Goodson, and Cleveland also challenge the district court's supplemental instruction to the jury. In particular, they contend that the district court erred in giving a supplemental instruction that ignored state-law ownership principles and embraced the Government's theory that ownership could be determined simply from informal discussions.

After deliberations began, the jury sought clarification of three issues: (1) the legal definition of a partnership *in commendam*, (2) how much control is given up by partners, and (3) who appoints a general manager. In response, the district court provided the jury a general description of a partnership *in commendam* and the authority of the general and limited partners. The court concluded its supplemental instruction by charging the

jury, over defense objections: "It is for you to determine based on all the evidence in the case what the parties' arrangements were as to control, ownership and management of Truck Stop Gaming, Ltd."

We find no reversible error.

> A trial judge enjoys wide latitude in deciding how to respond to a question from the jury. "When evaluating the adequacy of supplemental jury instructions, we ask whether the court's answer was reasonably responsive to the jury's question and whether the original and supplemental instructions as a whole allowed the jury to understand the issue presented to it."

United States v. Mann, 161 F.3d 840, 864 (5th Cir.1998) (footnotes omitted) (quoting *United States v. Stevens*, 38 F.3d 167, 170 (5th Cir.1994)). In this case, the court's supplemental instruction was reasonably responsive to the jury's questions. Moreover, as mentioned above, satisfaction of state law requirements for ownership transfers was not a critical issue to be decided by the jury.

F. Travel Act Jury Instructions

Bankston was convicted on two Travel Act counts, which incorporated Louisiana's public bribery statute. He argues that his conviction ought to be reversed because the district court abused its discretion in failing to submit to the jury proposed charges on gift, attempted bribery, and circumstantial evidence.

First, Bankston asserts that he was entitled to an instruction that it is legal for a legislator to receive a gift. Such an instruction, however, was unnecessary given the

district court's charge that the Government had to prove beyond a reasonable doubt that Bankston, as the receiver of the bribe, acted "with the specific intent to be influenced in his conduct . . . as a Louisiana senator." Whether Bankston could lawfully receive a gift was wholly irrelevant to the jury's inquiry. Because the district court's Travel Act instruction was clear, detailed, and substantially covered the charge suggested by Bankston, the court's refusal to instruct on gift does not amount to error.

Second, Bankston, complains that the district court refused to instruct the jury on the lesser included offense of attempted bribery under Louisiana law. He argues that, in Louisiana, such an instruction is not discretionary and that, had the jury found only attempted bribery, the elements of the Travel Act charge would not have been met. In federal prosecutions for violations of the Travel Act, we have never required that district courts instruct on lesser included offenses. Accordingly, we find Bankston's argument to be devoid of merit.

Third, Bankston argues that the district court committed reversible error by failing to instruct on Louisiana's "circumstantial evidence rule." Because we have squarely rejected efforts to graft non-substantive points of state law into RICO charges, Bankston's claim fails. *See, e.g., United States v. Brown*, 555 F.2d 407, 418 n. 22 (5th Cir.1977) (explaining that " 'the reference to state law in the federal statute is for the purpose of defining the conduct prohibited' and is not meant to incorporate the state statute of limitations or procedural rules" (quoting *United States v. Revel*, 493 F.2d 1, 3 (5th Cir.1974))).

G. Witness Testimony

Cleveland, Fred Goodson, and Maria Goodson claim that the Government elicited improper witness testimony from two law enforcement officials, FBI Special Agent Gross and State Police Lieutenant Blackwelder. They launch four attacks on Gross and Blackwelder's testimony: (1) that both witnesses testified to legal conclusions, (2) that both witnesses gave testimony in the form of opinion, (3) that both witnesses testified as to "ultimate issue[s] of fact," and (4) that Gross's testimony exceeded his limited "summary" capacity. Evidentiary rulings are reviewed for abuse of discretion. *See General Electric Co. v. Joiner*, 522 U.S. 136, 118 S.Ct. 512, 517, 139 L.Ed.2d 508 (1997).

We find that the district court did not abuse its discretion in permitting the challenged testimony. Because neither Gross nor Blackwelder was designated as an expert witness, most of the caselaw that Cleveland cites for the proposition that a witness cannot testify in the form of an opinion is inapplicable. Unlike expert witnesses, lay persons are allowed more leeway under the Federal Rules in testifying in the form of opinions. *See* Fed.R.Evid. 701. Lay persons are explicitly allowed to testify in the form of opinion or inference on "ultimate issue[s] to be decided by the trier of fact." Fed.R.Evid. 704. Additionally, witnesses can testify in more than one capacity. *See United States v. Castillo*, 77 F.3d 1480, 1499 (5th Cir.1996) (noting that a summary witness could testify in multiple capacities). Accordingly, Special Agent Gross could have testified as a lay fact witness as well as a summary witness. Having reviewed both Agent Gross's

and Lieutenant Blackwelder's testimony, we find no reversible error.

H. Magazine Article Admission

Fred Goodson, Carl Cleveland, and Bankston challenge the district court's admission of a magazine article titled "Lies, Bribes and Videotape," found in the FBI's search of Fred Goodson's office. The district court admitted the article during redirect examination of FBI Special Agent Gross and instructed the jury that the article was being admitted not for the truth of the matter asserted, but solely on the issue of the state of mind of Fred Goodson, i.e., to contradict his assertions that he lacked knowledge and sophistication about politics and the types of transactions at issue. Evidentiary rulings are accorded considerable deference on appeal; "error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected." Fed.R.Evid. 103(a); *see United States v. Brito*, 136 F.3d 397, 412 (5th Cir.1998).

Fred Goodson and Cleveland contest the admissibility of the article both as to relevance and as to prejudicial effect. Even were the article both irrelevant and prejudicial, however, its admission did not affect a substantial right of either Goodson, Cleveland, or Bankston. First, the district court did not allow introduction of the article by the Government until redirect examination. Second, the district court permitted only "narrow clarifying" references to the article in light of the defense's introduction, on cross examination, of other documents etc. that had been found in the same folder as the "Lies,

Bribes and Video Tape" article. Third, the Government's redirect regarding the disputed article constituted less than four pages of transcript. Fourth, on recross, the defense had the opportunity to question Agent Gross in detail about the subject matter of the article and elicited from him representations that the investigation described in the article in no way involved "anybody in this room."

For these reasons, we find that the admission of the "Lies, Bribes and Video Tape" article did not affect a substantial right of any appellant.

I. Prosecutor's Closing Remarks

All appellants claim that in his rebuttal argument the prosecutor made improper and inflammatory remarks, inviting the jury to convict the defendants in order to "make a change" and to "start taking back [their] state." Appellants argue that the district court's subsequent instruction failed to cure the taint of the improper closing and that reversal is therefore required.[14]

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[14] The district court, both at trial and in its opinion on defendants' motions for new trial, recognized the impropriety of the prosecutor's "make a change" closing. At the conclusion of the prosecutor's argument, the court instructed the jury to disregard the prosecutor's improper remarks:

> I would like to instruct you again that this case is not about the general conditions in the state of Louisiana. To the extent that Mr. Manger made reference to that in his closing argument, you are instructed to disregard the comments about the general condition of Louisiana state government as it relates to education or other issues.

A criminal defendant bears a substantial burden when attempting to demonstrate that improper prosecutorial comments constitute reversible error. " 'A criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.' " *United States v. Lowenberg*, 853 F.2d 295, 302 (5th Cir.1988) (quoting *United States v. Young*, 470 U.S. 1, 11, 105 S.Ct. 1038, 1044, 84 L.Ed.2d 1 (1985)). Improper prosecutorial comments require reversal only if the comments substantially affected the defendant's right to a fair trial. *See United States v. Murrah*, 888 F.2d 24, 27 (5th Cir.1989). In evaluating the extent to which prosecutorial comments affected a defendant's right to a fair trial, three factors are considered: the magnitude of the prejudicial effect of the remarks, the efficacy of any cautionary instruction, and the strength of the evidence of the defendant's guilt. *See United States v. Casel*, 995 F.2d 1299, 1308 (5th Cir.1993).

Here, the inflammatory remarks, to which defense counsel objected at trial, came at the end of the prosecutor's rebuttal argument. The improper prosecutorial comments responded to improper arguments made by counsel for Rayburn. Any prejudicial effect inhering to the Goodsons, Bankston, and/or Cleveland, it seems, would have been substantially less than that attaching to Rayburn. Rayburn's acquittal therefore suggests that the jury was not influenced by the improper comments.[15]

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[15] Appellants argue that Rayburn's "sympathy" acquittal is of little significance because he was 80 years old at the time of the trial. Rayburn, however, was not the only defendant acquitted of charges. The fact that each appellant was found not guilty on some counts suggests that the jury reached its verdict free of the taint of the prosecutor's improper remarks.

With regard to the efficacy of the district court's instruction, the court more than once instructed the jury to disregard the improper arguments. The language the court adopted when instructing the jury for the second time was in part borrowed from the words of Bankston's attorney. We find sufficiently curative both the district court's repeated instruction to disregard the improper argument as well as its caution to the jury that lawyer argument was not evidence.

Finally, as to the strength of the evidence of guilt, our review of the trial record in its entirety reveals that the evidence presented by the Government was sufficient to support each of the convictions against each of the appellants. Thus, we conclude that the prosecutorial comments did not substantially affect the Goodsons', Cleveland's, or Bankston's respective rights to a fair trial.

J. Sufficiency of the Evidence

Fred Goodson, Maria Goodson, and Larry Bankston contest the sufficiency of the evidence to support their respective convictions. In evaluating the sufficiency of the evidence on appeal, we consider the evidence in the light most favorable to the Government, drawing all reasonable inferences in support of the jury's verdict. *See United States v. Lopez*, 74 F.3d 575, 577 (5th Cir.1996). The evidence is sufficient if a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); *United States v. Gaytan*, 74 F.3d 545, 555 (5th Cir.1996). The evidence need not exclude every reasonable hypothesis of innocence or

be wholly inconsistent with every conclusion except that of guilt, and the jury is free to choose among reasonable constructions of the evidence. *See Lopez*, 74 F.3d at 577.

We address the arguments raised by each appellant in turn.

1. Fred Goodson

Fred Goodson argues that the evidence is insufficient to support his two-count conviction for mail fraud because it fails to establish that he had the specific intent to commit fraud.

To establish a mail fraud violation under 18 U.S.C. § 1341, the Government must demonstrate (1) a scheme to defraud, (2) the use of mails to execute that scheme, and (3) the defendant's specific intent to commit fraud. *See United States v. Tencer*, 107 F.3d 1120, 1125 (5th Cir.1997). "Intent to defraud requires an intent to (1) deceive, and (2) cause some harm to result from the deceit." *United States v. Jimenez*, 77 F.3d 95, 97 (5th Cir.1996). A defendant has the intent to defraud if he acts knowingly with the specific intent to deceive for the purpose of causing pecuniary "loss to another or bringing about some financial gain to himself." *United States v. Blocker*, 104 F.3d 720, 732 (5th Cir.1997).

According to Goodson, the mail fraud charges rested on two premises: that he and Cleveland were the "true owners" of Truck Stop Gaming, and that they hid that fact from regulators in order to avoid a suitability investigation of their finances. Goodson, on appeal, contests the sufficiency of the evidence only as it relates to the second

premise – Goodson and Cleveland's avoidance of a suitability investigation.

This second premise, however, does not constitute an essential element of mail fraud. Instead, the desire to avoid a suitability investigation relates merely to motive, representing the Government's theory as to why Cleveland and Goodson committed the fraud. Because we have never required the Government to prove nor the jury to find motive beyond a reasonable doubt, Fred Goodson's argument fails.

2. Maria Goodson

Maria Goodson challenges the sufficiency of the evidence for her mail fraud conviction. She claims that the Government failed to establish that she knowingly, and with specific intent to defraud, participated in a scheme to hide either (1) the true ownership interests of her father and Carl Cleveland in TSG, Ltd. or (2) the 4.99% ownership interest held by Benny Rayburn, Jr.

Because the jury need only have found Maria Goodson guilty beyond a reasonable doubt on one of the two potential schemes underlying her mail fraud conviction, we address only the evidence concerning Maria Goodson's specific intent to conceal the 4.99% ownership interest transferred to Benny Rayburn. The Government presented the jury with a document dated August 1, 1994, signed by Maria Goodson in which she agreed to "assign, sell, convey and deliver unto Benjamin B. Rayburn, Jr. a 4.99% interest out of a 100% interest in the Truck Stop Gaming, Ltd. partnership." Evidence showed that the transfer of this interest was not reported to the State

Police in TSG, Ltd.'s 1995 license renewal application, even though such minority purchases were required to be reported.

Maria Goodson's awareness of the transfer of ownership is indicated by two pieces of evidence. First, she signed the conveyance itself. Second, in a recorded conversation between Maria Goodson and family accountant Joe Morgan, she described BAJ, LLC, the limited liability company to which Rayburn ultimately transferred his 4.99% interest, as having become a 4.9% partner. Accordingly, we find that the jury had sufficient evidence to convict Maria Goodson for mail fraud.

3. Larry Bankston

Larry Bankston contests the sufficiency of the evidence as to his conviction on two counts of violating the Travel Act, 18 U.S.C. § 1952 (1997). The first count involved an interstate telephone call on June 20, 1995, from Fred Goodson to Meyer Realty to set up what was alleged to have been a bribe in the form of a "sham" rental of Bankston and his wife's Gulf Shores condominium. The second involved Fred Goodson's use of an interstate commercial carrier on June 22, 1995, to forward a $1,555.01 check to Meyer Realty as payment for the condominium rental.

The essential elements for a Travel Act conviction are:

(1) travel or use of the mail or any facility in interstate or foreign commerce;

> (2) with the specific intent to promote, manage, establish, or carry on – or distribute the proceeds of – unlawful activity; and
>
> (3) knowing and willful commission of an act in furtherance of that intent subsequent to the act of travel or use of the mail or facility of interstate or foreign commerce.

See United States v. Logan, 949 F.2d 1370, 1380-81 (5th Cir.1991). Under Louisiana law, an elected official is guilty of public bribery if he accepts anything of apparent present or prospective value with the specific intent to be influenced in his employment, position, or duty. *See* La.Rev.Stat. Ann. § 14:118 (West Supp.1999).

Bankston attacks the sufficiency of the evidence on three separate grounds: (1) insufficient proof that he had the requisite intent to be influenced in his official conduct by the condominium rental; (2) insufficient proof that the condominium rental amounted to anything more than a legal gift; and (3) insufficient proof that he committed an overt act in furtherance of the alleged bribery after the interstate communications at issue.

The evidence at trial does not support Bankston's claim. The evidence showed that in February 1995 Bankston and his wife discussed establishing an arrangement whereby a proposed "renter" would pay to use their Alabama condominium despite the renter's true intention not to do so. Records from Meyer Realty showed that Fred Goodson rented the Bankstons' condominium and paid for the rental by check. Testimony from FBI agents revealed that the Bankston family, not Goodson, used the condominium during the rental week in question. Finally, the jury heard many intercepted conversations between

Bankston and others in which Bankston indicated that he would use the power of his office to protect Goodson's video poker interests during the legislative session. Based upon this evidence, we affirm Bankston's conviction on the two Travel Act counts.

K. Sentencing

1. Maria Goodson

a. Section 5K2.7 Upward Departure

Maria Goodson complains that the district court improperly enhanced her offense level six points for a "significant disruption of governmental function," pursuant to U.S. Sentencing Guideline section 5K2.7.[16] She argues that the disruption identified by the district court is not the type of "significant" disruption that the Commission contemplated when drafting section 5K2.7 and that, although the submission to a state agency of one

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[16] Section 5K2.7 provides in part:

> If the defendant's conduct resulted in a significant disruption of a governmental function, the court may increase the sentence above the authorized guideline range to reflect the nature and extent of the disruption and the importance of the governmental function affected. Departure from the guidelines ordinarily would not be justified when the offense of conviction is an offense such as bribery or obstruction of justice; in such cases interference with a governmental function is inherent in the offense, and unless the circumstances are unusual the guidelines will reflect the appropriate punishment for such interference.

false application may disrupt the agency's function, it only does so in an "ordinary" sense. We disagree.

A district court has "wide discretion" in imposing a section 5K2.7 upward departure. *United States v. Hatch*, 926 F.2d 387, 397 (5th Cir.1991) (explaining that the Fifth Circuit has repeatedly granted district courts "wide discretion to decide whether aggravating factors exist to support an upward departure"). The appropriateness of a departure turns on the importance of the government function impacted, not the degree of the impact. *Cf. Hatch*, 926 F.2d 387 (affirming a 5K2.7 upward departure based on the defendant, a former Louisiana sheriff, authorizing payments, representing a portion of the sheriff office's operating budget, to a purported jail construction project consultant); *United States v. Garcia*, 900 F.2d 45 (5th Cir.1990) (holding that an upward departure was warranted and reasonable where postal inspectors recovered 248 first-class letters from the possession of a defendant postal employee). Here, when Maria Goodson submitted TSG, Ltd.'s false 1995 renewal application, failing to disclose any ownership interest held by Fred Goodson, Carl Cleveland, or Benny Rayburn, she effectively shielded those men from suitability analysis. In doing so, Maria Goodson thwarted Louisiana's video poker regulatory and licensing scheme designed to investigate the honesty and integrity of prospective license holders. Based upon the importance of that regulatory scheme, we find that the district court did not abuse its discretion in imposing a section 5K2.7 upward departure.

b. Loss Calculation

The Government, in its cross-appeal, contends that the district court miscalculated Maria Goodson's offense level. Maria Goodson was convicted of one count of mail fraud in connection with TSG, Ltd.'s 1995 license renewal application. The district court sentenced her in accordance with section 2F1.1 of the Sentencing Guidelines. That section specifies a base offense level of six for fraud and provides for incremental increases in the offense level depending on, *inter alia*, the amount of loss caused by the fraud. *See* U.S. Sentencing Guidelines Manual § 2F1.1 (1997). In calculating Maria Goodson's offense level, the court found that the State of Louisiana had suffered no "actual or intended monetizable loss . . . by virtue of Ms. Goodson's having fraudulently obtained the license." Accordingly, the district court did not increase Ms. Goodson's base offense level for any loss.

The Government asserts that the district court erred in finding that the State of Louisiana suffered no loss and in failing to use defendant's gain as an alternative method of valuation. The Government asserts that, in keeping with section 2F1.1's Application Note 8, Maria Goodson's base offense level should have been increased eleven levels based upon TSG, Ltd.'s $1.4 million annual gain. *See* U.S. Sentencing Guidelines Manual § 2F1.1 App. Note 8 (1997); *see also United States v. Smithson*, 49 F.3d 138, 144 (5th Cir.1995) (recognizing that under section 2F1.1, Application Note 8, a sentencing court may utilize the offender's gain as an alternative valuation method for assessing the amount of loss when the loss is difficult to determine).

In its sentencing cross-appeal, the Government urges use of TSG, Ltd.'s $1.4 million annual revenues as the appropriate valuation of Maria Goodson's gain, yet throughout trial and all subsequent forfeiture proceedings, the Government argued that Maria Goodson, in fact, was not the "true owner" of TSG, Ltd. The verdict of the jury as well as the district court's judgment of forfeiture confirmed the success of the Government's hidden ownership theory of prosecution. Accordingly, we consider Fred Goodson and Carl Cleveland the true owners of TSG, Ltd. and agree that TSG, Ltd.'s $1.4 million gain could not be attributed to Maria Goodson, a non-owner. Therefore, the district court did not err in refusing to use TSG, Ltd.'s $1.4 million annual revenues as an alternative valuation method for loss pursuant to section 2F1.1.

2. Bankston

a. Eleven-level Enhancement

Bankston challenges as unsupported by the evidence the district court's eleven-level increase in his base offense level under section 2C1.1(b)(2)(A). This Court examines a district court's factual findings only for clear error and affords great deference to the court's application of the Guidelines to those facts. *See United States v. Snell*, 152 F.3d 345, 346 (5th Cir.1998).

The district court, relying on the Presentence Report ("PSR") as well as facts elicited at trial and the forfeiture proceeding, based Bankston's offense level enhancement on its calculation of the "expected benefit to be received

by the individual paying the bribe," namely Fred Goodson.[17] The district court found that the benefit to be received by Goodson in return for the bribe was protection for a two-year period from legislation that would otherwise interfere with the continued operation of his video poker business. The district court, recognizing that evidence at trial supported a finding that Goodson held a 50% interest in TSG, Ltd., determined that the expected benefit to be received by Goodson was one-half the profits to TSG, Ltd. for a two-year period, or $1.4 million. We find the district court's "Reasons for Sentencing of Larry S. Bankston" to be thorough and well-reasoned. Bankston's assertion of error is meritless.

b. Expected Benefit

The Government, on cross-appeal, argues that the district court erroneously reduced the expected benefit to be received for the bribe to the ownership percentage in TSG, Ltd. of the briber, Fred Goodson. Specifically, the Government contends that the district court erred in limiting "benefit" as used in section 2C1.1(b)(2)(A) to "personal benefit," failing to consider the actual benefit sought, the continued unfettered operation of the RICO enterprise. The issue raised by the Government is one of first impression for this Circuit.

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[17] The Guidelines assign punishment at the greatest of three calculations: (1) the value of the bribe; (2) the value of the benefit to be received; or (3) if the offense involved payment for the purpose of influencing an elected official, an eight-level increase. *See* U.S. Sentencing Guidelines Manual § 2C1.1 (1997).

It is well established that sentencing courts are bound by "commentary in the Guidelines Manual that interprets or explains a guideline . . . unless it violates the Constitution or a federal statute, or is inconsistent with, or [is] a plainly erroneous reading of, that guideline." *See Stinson v. United States*, 508 U.S. 36, 38, 113 S.Ct. 1913, 1915, 123 L.Ed.2d 598 (1993). The Commentary to section 2C1.1 states that for deterrent purposes, the punishment should be commensurate with the "gain to the payer or the recipient of the bribe," whichever is higher. As contemplated by the Commission, the "gain to the payer" is the "value of the benefit received or to be received." Thus, the expected benefit to be received as referenced in section 2C1.1 is the benefit to the payer of the bribe.

Resolution of the Government's cross-appeal, therefore, turns on the identity of the "payer." If Fred Goodson, in his individual capacity, bribed Bankston, then the district court properly limited "expected benefit" to an amount equivalent to Goodson's personal benefit. If, on the other hand, Fred Goodson, as agent for TSG, Ltd., bribed Bankston, then the Government would be correct that the expected benefit ought to be measured by the profits to the RICO enterprise.

The issue of the identity of the payer is a question of fact best resolved by the district court. Because the evidence presented at trial could support either the individual-capacity or RICO-enterprise theory of bribery, we cannot conclude that the district court committed clear error in determining that the personal benefit to Goodson was the appropriate valuation of the expected benefit to be received.

L. RICO Forfeiture

A person who violates RICO must forfeit any interest acquired or maintained in violation of the statute, any enterprise established or conducted in violation of RICO, and any property constituting or derived from proceeds obtained in violation of RICO. *See* 18 U.S.C. § 1963(a). Here, the Government sought, and the district court ordered, the forfeiture of both Fred Goodson's and Carl Cleveland's interests in TSG, Ltd., in an amount equal to the proceeds received by TSG, Ltd. between July 1994 and August 1995. Fred Goodson, Carl Cleveland,[18] Maria Goodson, Alex Goodson, and TSG, Inc. appeal, albeit on different grounds, the district court's judgment of forfeiture.

With regard to Fred Goodson's and Carl Cleveland's claim, we note that the district court ordered that the proceeds of TSG, Ltd. be forfeited pursuant to 18 U.S.C. § 1963(a)(1) and (a)(2), as well as (a)(3). Goodson, though, attacks only two of these three grounds. He raises no error as to the forfeiture of proceeds under § 1963(a)(3). Given the identity of proceeds forfeited pursuant to each theory, we affirm the district court's August 1997, forfeiture order.

Maria Goodson, Alex Goodson, and TSG, Inc. argue that the district court erred in failing properly to apply Louisiana law to the question of ownership of TSG, Ltd. and TSG, Inc. They assert that no state law exists that

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[18] Carl Cleveland incorporates Fred Goodson's forfeiture arguments.

would support the district court's ruling that Fred Goodson and Carl Cleveland were the "true owners" of TSG, Ltd.

Section 1963(*l*)(6)(A) provides petitioners the opportunity to recoup forfeited property if they can establish by a preponderance of the evidence either (1) that they have a current legal right, title, or interest in the property *and* that the right, title, or interest was vested in them instead of the defendant at the time of the commission of the RICO offenses; or (2) that they have a current legal right, title, or interest in the property *and* that the right, title, or interest was superior to the right, title, or interest of the defendant at the time of the commission of the RICO offenses. *See* 18 U.S.C. § 1963(*l*)(6)(A). We review the district court's findings of fact under the clearly erroneous standard and the question of whether those facts constitute legally proper forfeiture de novo. *See United States v. Marmolejo*, 89 F.3d 1185, 1197 (5th Cir.1996).

Maria and Alex Goodson assert that they are the record owners of TSG, Ltd. and its corporate general partner, TSG, Inc. They point to TSG, Ltd.'s Agreement of Partnership, which they both signed and which was filed with the Louisiana Secretary of State, as evidence of their current and superior interest in the forfeited companies. They urge us to find that the district court improperly disregarded their partnership agreement when it concluded that Fred Goodson and Carl Cleveland were the true owners of TSG, Ltd.

We agree with the district court's decision not to allow an obviously false partnership agreement to be used to provide the basis for a claim of interest under

§ 1963(*l*)(6)(A). As the district court indicated, the jury's verdict in the instant case established that Fred Goodson, Maria Goodson, and Carl Cleveland perpetrated a fraud on the State of Louisiana. The jury necessarily found that Fred Goodson and Carl Cleveland were the true owners of TSG, Ltd. and that Maria Goodson and her brother Alex were straw people used in the sham to hide the true ownership of TSG, Ltd.

Testimony at the October 31, 1997 evidentiary hearing to determine the interests of Alex and Maria Goodson bolsters our resolve not to allow them to assert ownership in the TSG entities based upon their "sham" partnership agreement. With regard to Alex Goodson, the district court found that his hearing testimony revealed that he did not consider himself to have any real interest in either TSG, Inc. or TSG, Ltd. Alex described his involvement with the companies as someone executing an ownership document as an agent of the company, in the capacity of a nominee. His testimony revealed that he had no understanding of the "contribution" that was attributed to him in the partnership agreement for TSG, Ltd. As to Maria Goodson, the court found that her testimony likewise "fell short of establishing that she and her brother . . . were the true owners of the Truck Stop Gaming entities." In particular, Maria Goodson told the court at the forfeiture hearing that at the time the companies were formed and incorporated, she did not associate a company being "in her name" with ownership. Equally problematic was a conversation with Carl Cleveland in which she requested 1% of the net profits of TSG, Ltd. If she had in fact been the owner of the TSG entities, she would not

have needed to ask Carl Cleveland for an interest in a percentage of the companies' profits.

In light of the above evidence, the district court properly disregarded the "sham" partnership agreement. Consistent with the detailed analysis provided in the district court's April 1998 order, we conclude that Alex Goodson, Maria Goodson, and TSG, Inc. failed to demonstrate by a preponderance of the evidence a legal right, title, or interest in TSG, Ltd. Their appeal of the district court's April 1998 judgment of forfeiture, therefore, fails.

III. Conclusion

Appellants raise an abundance of evidentiary, statutory, and constitutional challenges, none of which warrant reversal. For the reasons stated above, we affirm each Appellant's judgment of conviction and sentence as well as the judgment of forfeiture.

AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CRIMINAL ACTION
VERSUS	NO. 96-207
CARL W. CLEVELAND, ET AL.	SECTION "R" (1)

ORDER AND REASONS

(Filed Apr. 15, 1998)

On October 21, 1997, this Court issued a final order of forfeiture ordering that Carl W. Cleveland's and Fred H. Goodson's interests in Truck Stop Gaming, Inc. ("TSG, Inc.") and Truck Stop Gaming, Ltd. ("TSC, Ltd.") be condemned, forfeited and vested in the United States of America, pursuant to 18 U.S.C. § 1963(a)(1) and (a)(2). On October 31, 1997, Alexandros F. Goodson and Maria F. Goodson petitioned this Court to adjudicate their interests in the Truck Stop Gaming entities pursuant to 18 U.S.C. § 1963(1). A hearing was held in this matter on February 4, 1998, in which the entire record of both the criminal and forfeiture proceedings was incorporated into the record and additional testimony was taken and exhibits introduced for purposes of determining the ownership of the Truck Stop Gaming entities. After considering the relevant law, the evidence presented at the hearing, as well as the relevant portions of the record of the criminal and forfeiture proceedings, the Court rules as follows.

I. BACKGROUND

In its Forfeiture Order dated August 26, 1997, the Court determined that Carl W. Cleveland's and Fred H. Goodson's interests in TSG, Inc. and TSG, Ltd. were forfeitable to the United States of America pursuant to 18 U.S.C. § 1963(a)(1) and (a)(2). The Court made the following conclusions of law:

> 5. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that Goodson and Cleveland had an interest in Truck Stop Gaming, Ltd., Truck Stop Gaming, Inc., and O'Aces Video Poker Lounge which they acquired and/or maintained through violations of 18 U.S.C. § 1962. These interests are forfeitable to the United States pursuant to 18 U.S.C. § 1963(a)(1).
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> . . . .
>
> 10. Based upon jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that defendants Goodson and Cleveland have an interest in, security of, claims against, and property and contractual rights in Truck Stop Gaming, Ltd.; Truck Stop Gaming, Inc.; and the O'Aces Video Poker Lounge, which interest provided Cleveland and Goodson with a source of influence over the operations of the enterprise and forfeitable to the United States pursuant to 18 U.S.C. § 1963(a)(2). In addition, as these entities were part of the RICO enterprise found in violation of 18 U.S.C. § 1962(c), they are forfeitable in their entirety.

Forfeiture Order (Aug. 26, 1997) at 20, 22-23.

On October 31, 1997, Maria F. Goodson, Alexandros F. Goodson, and Truck Stop Gaming, Inc. (collectively referred to as "petitioners") petitioned this Court to adjudicate their interests in TSG, Inc. and TSG, Ltd. Maria and Alex Goodson submit that they each own 50% of the stock of TSG, Inc. and that their ownership interests were acquired in 1992 at the time of the formation and incorporation of the company. Maria and Alex also assert that they are limited partners of, and they each own 49% of the partnership interest in, TSG, Ltd. They contend that their ownership interests were acquired in February of 1992 at the time of TSG, Ltd.'s formation. Truck Stop Gaming, Inc. submits that it is a general partner of TSG, Ltd. and currently owns 2% of its partnership interest. The Government contests petitioners' asserted interests and maintain that Fred Goodson and Carl Cleveland are the true or *de facto* owners of TSG, Ltd. and TSG, Inc.

II. DISCUSSION

Pursuant to 18 U.S.C. § 1963(1)(2), petitioners asked this Court for a hearing to adjudicate the validity of their alleged interests in TSG, Inc. and TSG, Ltd. To prevail on their claim, petitioners must establish by a preponderance of the evidence that:

> (A) the petitioner has the legal right, title, or interest in the property, and such right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title or

> interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
>
> (B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

28 U.S.C. § 1963(1)(6). In support of petitioners' claims, Maria Goodson, Alex Goodson, and Douglas Handshoe testified at the hearing, and the petitioners presented evidence, most of which was drawn from the record of the criminal case. In rebuttal, and in defense of its claim to the forfeited property, the Government cross-examined the witnesses and presented evidence from the record of the criminal case. The Court also incorporated and considered the records of the criminal case and forfeiture proceeding.

Based on the evidence introduced at the criminal trial, this Court previously concluded that the jury could have found beyond a reasonable doubt that Fred Goodson and Carl Cleveland had "hidden ownership" interests in TSG, Inc. and TSG, Ltd., which were disguised by putting the businesses in the names of Alex and Maria Goodson. The evidence to support this conclusion is set forth in this Court's Post-Trial Order dated August 26, 1997, at 10-21, which is incorporated herein by reference and not repeated here. The Court notes that most of the exhibits cited in the Post-Trial Order were submitted by the Government at the February 4, 1998 hearing in defense of its claim to the forfeited property.

Although Maria and Alex Goodson denied that Goodson or Cleveland ever told them they were signing documents to hide Cleveland's or Goodson's interest in TSG, Inc. and TSG, Ltd., their testimony overall supports the conclusion that Fred Goodson and Carl Cleveland were the true owners of TSG, Inc. and TSG, Ltd. Alex Goodson admitted he would have signed whatever documents his father asked him to sign regardless of whether his father explained his role in the deal. Further, throughout his testimony, Alex Goodson referred to the TSG entities as a "business interest my father had," a "family business," and his father's "new business." Further, Alex understood his involvement with the companies as someone "executing the [ownership] document as an agent of the company," "in the capacity of a nominee." He had no understanding of the "contribution" that was attributed to him in the partnership agreement for TSG, Ltd. When asked about Schedule G to TSG, Ltd.'s video poker application — a document which Alex signed as the applicant — Alex said he did not really know what the $245,000 entry was, which was purportedly a note he was obligated to pay to Fred Goodson for the purpose of acquiring an ownership position in TSG, Ltd. *See* Pet. Exh. 5. Alex could not recall or explain the income claimed on his 1993 federal tax return in the amount of $162,213. Although Alex said he did not know what his purported interest in the TSG entities was, he seemed to recognize that despite the income reported on the return, he actually received a check for only enough income to pay the entities' taxes. The evidence at trial revealed that these types of decisions as to disposition of the partnership's income were made by Cleveland and Goodson. That Alex

Goodson did not consider that he had any real interest in the TSG entitles is evident by the fact that, after discussion with his accountant, he did not value that interest in his Statement of Financial Condition of December 31, 1994 at a time when he was seeking financing for another business. *See* Pet. Exh. F3. Apparently, it was not until the criminal investigation that Goodson learned something about what his interest in the businesses was supposed to be, but he still could not explain it. Rather than asserting that he owed 49% of TSG, Goodson said "I understand that I'm part of it in some type of way."

Maria Goodson's testimony likewise fell short of establishing that she and her brother, not Fred Goodson and Carl Cleveland, were the true owners of the Truck Stop Gaming entitles. Ms. Goodson was convicted of one count of mail fraud in the criminal trial. She testified in the forfeiture hearing that at the time the companies were formed and incorporated, she did not associate a company being "in her name" with ownership. she says she now knows she was an owner of the TSG entitles. She recalled receiving no explanation of any of the transaction documents when her father told her she needed to sign them. Further, her request for 1% of the net profits in TSG, Ltd., *see* Gov't Exh. T29, belies her asserted ownership interest of 49% of the partnership and 50% of its general partner. If she was in fact the owner of the TSG entities, she would not have had to ask her father or Carl Cleveland for an interest in a percentage of the companies' profits. Her after-the-fact efforts to "explain" that conversation were not credible. Maria was also unaware of the purported $370,000 "loan" from the Cleveland law

firm to herself in 1995. In summary, Ms. Goodson's testimony is that now she gets it — it has all been explained to her, now that there are forfeiture proceedings in which her father's interest stands to be forfeited. The Court finds this self-serving testimony short of the mark.

The Court also notes that it looks skeptically upon the documents submitted into evidence showing Maria's and Alex's asserted legal interests. As explained in this Court's Post-Trial Order (Aug. 26, 1997), Count 6 of the Superseding Indictment charged Maria Goodson, Fred Goodson, and Carl Cleveland with mail fraud. Specifically, the indictment charges that TSG, Ltd's 1995 license renewal was fraudulently obtained from the State of Louisiana by submitting false and incomplete information on applications and related affidavits submitted to the Louisiana State Police. One of two potential schemes underlying Count 6 was the defendants' failure to disclose to the State Police a "hidden ownership" interest in TSG, Ltd. held by Fred Goodson and Carl Cleveland, which was disguised by putting the business in the names of Maria and Alex. Given the defendant's exposure to criminal liability because of the license renewal application, it was in defendants' and petitioners' interest to prepare any records consistent with the criminal scheme.

III. CONCLUSION

Based on the evidence submitted in this proceeding, including the records of the criminal case and forfeiture hearing, the Court concludes that petitioners have not established by a preponderance of the evidence that (1) at the time of the commission of the acts giving rise to the

forfeiture, they had a legal right, title or interest in TSG, Inc. or TSG, Ltd. that was vested in them and not the defendants, or (2) they acquired a legal right, title or interest in the property from the defendants as a *bona fide* purchaser for value and, at the tie of the purchase, was reasonably without cause to believe that the property was subject to forfeiture. Instead, the Court finds that the petitioners' have no valid interests in TSG, Inc. and TSG, Ltd. for purposes of this forfeiture proceeding. For all of the foregoing reasons, the Court finds that Carl Cleveland and Fred Goodson are the true owners of TSG, Inc. and TSG, Ltd. and the Government is therefore entitled to forfeit the entitles in their entirety pursuant to this Court's Forfeiture Order (Aug. 26, 1997) and Final Order of Forfeiture (Oct. 21, 1997).

Accordingly, petitioners' claims are denied.

New Orleans, Louisiana, this 15th day of April, 1998.

/s/ Sarah Vance
SARAH S. VANCE
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CRIMINAL ACTION
	NO. 96-207
VERSUS	SECTION "R"
CARL CLEVELAND, ET AL.	

ORDER AND REASONS

(Filed Aug. 26, 1997)

This matter is before the Court for a determination of the property, if any, to be forfeited by virtue of the convictions of defendants Fred Goodson and Carl Cleveland of 1 count of racketeering under 18 U.S.C. § 1962(c), 1 count of racketeering conspiracy under 18 U.S.C. § 1962(d), and several counts of money laundering under 18 U.S.C. § 1956. Both defendants have waived a jury determination on the forfeiture issue. A hearing was held on July 14, 1997, in which the entire record of the criminal proceedings in this case was incorporated into the record and additional testimony was taken for purposes of deciding the forfeiture issues. After considering the evidence presented at the forfeiture hearing, the entire record of the criminal trial, the parties' submissions regarding forfeiture, and the relevant law, the Court enters the following findings of fact and conclusions of law as to the forfeiture issues before it. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

FINDINGS OF FACT:

1. On June 27, 1997, the defendants, Carl W. Cleveland ("Cleveland") and Fred H. Goodson ("Goodson"), were found guilty after jury trial of the following counts[1]

COUNT	CHARGE	CLEVELAND	GOODSON
1	RICO Substantive 18 U.S.C. § 1962(c)	GUILTY	GUILTY
2	RICO Conspiracy 18 U.S.C. § 1962(d)	GUILTY	GUILTY
5	Mail Fraud 18 U.S.C. § 1341	GUILTY	GUILTY
6	Mail Fraud 18 U.S.C. § 1341	GUILTY	GUILTY
8	Money Laundering 18 U.S.C. § 1956	GUILTY	GUILTY

[1] Both Cleveland and Goodson as well as co-defendants Maria F. Goodson and Larry S. Bankston, were also found guilty of additional counts which are not relevant to the forfeiture issues herein.

9	Money Laundering 18 U.S.C. § 1956	GUILTY	GUILTY
10	Money Laundering 18 U.S.C. § 1956	GUILTY	GUILTY
11	Money Laundering 18 U.S.C. § 1956	NOT GUILTY	GUILTY
12	Money Laundering 18 U.S.C. § 1956	GUILTY	GUILTY
13	Tax conspiracy 18 U.S.C. § 371	GUILTY	NOT GUILTY
15	Aiding & Abetting False Declaration Under Penalty	GUILTY	N/A
	Declaration Under Penalty of Perjury 26 U.S.C. § 7206(2)		N/A

2. On June 27, 1997, Cleveland and Goodson were found not guilty after a jury trial of conducting an illegal gambling business pursuant to 18 U.S.C. § 1955 (Count 7).[2]

3. Defendants Cleveland and Goodson knowingly and voluntarily waived their right to a jury determination of forfeiture issues and committed the forfeiture issue to the district court for all findings of fact and conclusions of law.

4. Truck Stop Gaming, Ltd., was established by and through the efforts of Goodson and Cleveland on or about February 21, 1992.

5. As a part of its business operations, Truck Stop Gaming, Ltd., applied for and obtained a license to operate a video poker truck stop at the O'Aces Video Poker Lounge in Slidell, Louisiana.

6. At all times material to these proceedings the O'Aces Video Poker Lounge was located in the Budget Host Motel, owned and operated by Slidell Motel, Inc.

7. All video poker activities at the O'Aces Video Poker Lounge were predicated upon a site license to operate a video poker truck stop obtained by the Slidell Union 76 Auto/Truck Plaza, Inc.

8. Defendant Cleveland caused to be provided $245,000.00, which constituted 50% of all funds used to establish both Truck Stop Gaming, Ltd., and Truck Stop Gaming, Inc.

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[2] Both Cleveland and Goodson were also acquitted of several other counts, none of which affect the forfeiture issues before the Court.

9. Defendant Cleveland caused to be provided, on or about April 19, 1995, an additional $370,160.00 in funds to operate and further the business activities of both Truck Stop Gaming, Ltd., and Truck Stop Gaming, Inc.

10. Defendant Cleveland caused to be provided, on or about August 14, 1995, an additional $150,000.00 in funds to operate and further the business activities of both Truck Stop Gaming, Ltd., and Truck Stop Gaming, Inc.

11. Defendant Cleveland provided legal and other services to operate and further the business activities of both Truck Stop Gaming, Ltd., and Truck Stop Gaming, Inc.

12. Defendant Goodson provided $245,000.00, which constituted 50% of all funds used to establish both Truck Stop Gaming, Ltd., and Truck Stop Gaming, Inc.

13. Defendant Goodson provided, on or about September 12, 1995, an additional $412,024.68 in funds to operate and further the business activities of both Truck Stop Gaming, Ltd., and Truck Stop Gaming, Inc.

14. Defendant Goodson provided management and other services to operate and further the business activities of both Truck Stop Gaming, Ltd., and Truck Stop Gaming, Inc. through Goodson's management company, SMFM Management Corp.

15. Louisiana law required the issuance of a license by the Louisiana State Police before any person or entity could lawfully operate a video poker truck stop.

16. In order to obtain a video poker license, the applicant was required to submit an application to the State Police, which application was required to set forth certain specified information.

17. Applicants for a video poker license were required to certify that the information being submitted in connection with their application was true and correct.

18. Based upon the jury's conviction of Cleveland and Goodson on Counts 5 and 6 of the superseding indictment, and the conviction of their codefendant, Maria F. Goodson on Count 6, the defendants devised and carried out a scheme and artifice to defraud the State of Louisiana by fraudulently obtaining licenses to operate the O'Aces Video Poker Lounge on June 2, 1994 and May 25, 1995, as set forth in the superseding indictment.

19. The two licenses referred to in paragraph 18 above were required by Louisiana law for video poker operations to be conducted at the O'Aces Video Poker Lounge.

20. The application to obtain the license issued by the State Police on June 2, 1994, was submitted by the defendants on May 13, 1994.

21. The license issued by the State Police on June 2, 1994 was for the period from July 1, 1994 through June 30, 1995. The license therefore went into effect on July 1, 1994.

22. The license issued by the State Police on May 25, 1995 covered the period between July 1, 1995 and August 31, 1995.

23. Cleveland and Goodson's scheme to defraud the State of Louisiana helped enable the O'Aces Video Poker Lounge to keep conducting video poker activities after July 1, 1994 and to continue to make profits until it was shut down in August 1995. The scheme to commit mail fraud in violation of 18 U.S.C. § 1341 was a part of the

pattern of racketeering activity through which Cleveland and Goodson conducted the affairs of the enterprise alleged in the indictment in violation of 18 U.S.C. § 1962.

24. Records of Truck Stop Gaming, Ltd. establish that the video poker receipts or "gross drop" for Truck Stop Gaming, Ltd. from July 1994 to August 1995 – the time period covered by the fraudulently obtained licenses – total $11,498,329.00 and are comprised of the following monthly amounts:

July 1994	$ 726,491.25
August 1994	$ 687,171.50
September 1994	$ 661,373.25
October 1994	$ 802,610.75
November 1994	$ 799,364.25
December 1994	$ 817,367.50
January 1995	$ 739,688.25
February 1995	$ 740,484.50
March 1995	$ 892,267.00
April 1995	$ 790,279.00
May 1995	$ 799,429.50
June 1995	$ 900,111.00
July 1995	$ 928,545.25
August 1995	$ 585,377.25
TOTAL	$11,498,329.00

See Defendants Exhibits F-2, F-3, F-4, and F-5, Truck Stop Gaming, Ltd. General Ledger for 1/01/94 to 12/31/94,

1/01/95 to 6/30/95, 7/01/95 to 7/31/95, and 8/1/95 to 8/31/95, respectively.

25. Records of Truck Stop Gaming, Ltd. establish that the following monthly amounts were paid out by Truck Stop Gaming, Ltd. from July 1994 to August 1995 – the time period covered by the fraudulently obtained licenses – to those who won money playing video poker at O'Aces Video Poker Lounge:

July 1994	$ 465,894.25
August 1994	$ 427,526.00
September 1994	$ 429,896.25
October 1994	$ 498,623.75
November 1994	$ 514,554.00
December 1994	$ 526,497.25
January 1995	$ 462,943.50
February 1995	$ 477,328.50
March 1995	$ 593,057.75
April 1995	$ 513,055.50
May 1995	$ 522,020.25
June 1995	$ 600,231.50
July 1995	$ 633,891.75
August 1995	$ 383,512.25
TOTAL	$7,049,032.50

See Defendants Exhibits F-2, F-3, F-4, and F-5, Truck Stop Gaming, Ltd. General Ledger for 1/01/94 to 12/31/94, 1/01/95 to 6/30/95, 7/01/95 to 7/31/95, and 8/1/95 to 8/31/95, respectively.

26. Records of Truck Stop Gaming, Ltd. establish that the following monthly amounts were paid out by Truck Stop Gaming, Ltd. from July 1994 to August 1995 – the time period covered by the fraudulently obtained licenses – to the State of Louisiana pursuant to La. R.S. 33:4862.11(D)(2). These payments or "sweeps" were automatically deducted twice a month from a separate bank account that video poker machine operators were required to keep pursuant to Louisiana law.

July 1994	$ 84,682.81
August 1994	$ 84,387.63
September 1994	$ 75,220.36
October 1994	$ 98,774.16
November 1994	$ 92,684.81
December 1994	$ 93,857.83
January 1995	$ 92,946.70
February 1995	$ 85,528.30
March 1995	$ 97,243.00
April 1995	$ 85,760.78
May 1995	$ 90,215.04
June 1995	$ 97,365.72
July 1995	$ 95,544.68
August 1995	$ 65,602.01
TOTAL	$1,243,813.70

See Defendants Exhibits F-2, F-3, F-4, and F-5, Truck Stop Gaming, Ltd. General Ledger for 1/01/94 to 12/31/94, 1/01/95 to 6/30/95, 7/01/95 to 7/31/95, and 8/1/95 to 8/31/95, respectively.

27. Records of Truck Stop Gaming, Ltd. establish that Truck Stop Gaming, Ltd. paid a monthly fee of $4,300.34 to the State of Louisiana as license fees for the video poker machines used at the O'Aces Video Poker Lounge from July 1994 to August 1995 – the time period covered by the fraudulently received licenses. The total amount paid for these license fees during this time period was $60,204.76. Records of Truck Stop Gaming, Ltd. establish that these amounts were "written off" by Truck Stop Gaming, Ltd. as deductible expenses. *See* Defendants Exhibits F-2, F-3, F-4, and F-5, Truck Stop Gaming, Ltd. General Ledger for 1/01/94 to 12/31/94, 1/01/95 to 6/30/95, 7/01/95 to 7/31/95, and 8/1/95 to 8/31/95, respectively.

28. Records of Truck Stop Gaming, Ltd. establish that Truck Stop Gaming, Ltd.'s net proceeds from July 1, 1994 through August 31, 1995 were $3,145,278.04. (Net Proceeds – Gross Drop – Winner's Paid – State's Pro Rata Share – State License Fees or $11,498,329.00 – $7,049,032.50 – $1,243,813.70 – $60,204.76 – $3,145,278.04). *Id.*

29. The superseding indictment in this case contained a Notice of Racketeering Forfeiture, which fully incorporated the allegations of Count 1 (racketeering) and Count 2 (racketeering conspiracy) of the superseding indictment. *See* Superseding Indictment at 41.

30. The Notice of Racketeering Forfeiture referenced in paragraph 29 gave defendants Cleveland and Goodson notice that the Government sought to hold them jointly and severally liable pursuant to 18 U.S.C. § 1963(a)(1) for any interest they acquired or maintained in violation of

18 U.S.C. § 1962, *"including, but not limited to,* the . . . defendants' interests in O'Aces Video Poker Lounge; Truck Stop Gaming, Ltd., Truck Stop Gaming, Inc.; SMFM Management Corp.; Slidell Union 76 Auto/Truck Plaza, Inc.; Slidell Motel; Tempico, Inc.; and BAJ[,LLC]." *See* Superseding Indictment at 41 (emphasis added).

31. The Notice of Racketeering Forfeiture referenced in paragraph 29 gave defendants Cleveland and Goodson notice that the Government sought to have them forfeit pursuant to 18 U.S.C. § 1963(a)(2) any interest in security of, claims against, and/or property and/or contractual rights affording them a source of influence over the enterprise which the defendants established, operated, controlled, conducted, and participated in the conduct of, in violation of 18 U.S.C. § 1962, *"including, but not limited to,* the . . . defendants' interests in O'Aces Video Poker Lounge; Truck Stop Gaming, Ltd.; Truck Stop Gaming, Inc.; SMFM Management Corp.; Slidell Union 76 Auto/ Truck Stop Gaming, Inc.; Slidell Motel, Tempico, Inc.; and BAJ[,LLC]." *See* Superseding Indictment at 41-42 (emphasis added).

32. The Notice of Racketeering Forfeiture reference in paragraph 29 gave defendants Cleveland and Goodson notice that the Government sought to hold them jointly and severally liable pursuant to 18 U.S.C. § 1963(a)(3) for any property constituting, and derived from, proceeds which they obtained directly and indirectly from racketeering activity in violation of 18 U.S.C. § 1962. The superseding indictment made it clear that *"[t]his property includes but is not limited to,* the proceeds from the operation of Truck Stop Gaming, Ltd., to wit: at least $15,605,210 in United States concept and all interest and

proceeds traceable thereto." Superseding Indictment at 42 (emphasis added).

33. The superseding indictment in this case contained a Notice of Money Laundering Forfeiture, which fully incorporated the allegations of Counts 8 through 12 (Money Laundering) of the superseding indictment. *See* Superseding Indictment at 44.

34. The Notice of Money Laundering Forfeiture referenced in paragraph 33 gave the defendants notice that the Government sought to forfeit "all property real or personal, involved in the aforesaid offenses [*i.e.*, money laundering Counts 8 through 12] and all property traceable to such property. . . . " *See* Superseding Indictment at 44.

35. Defendants Cleveland and Goodson were both convicted, after trial by jury, of Count 8 of the Superseding Indictment, which charged each defendant with money laundering $637,700.00 in violation of 18 U.S.C. § 1956. The $637,700.00 laundered in Count 8 was part of a series of transactions designed to launder $1,305,300.00 in taxable income of Truck Stop Gaming, Ltd.

36. Defendants Cleveland and Goodson were both convicted, after trial by jury, of Count 9 of the Superseding Indictment, which charged each defendant with money laundering $667,600.00 in violation of 18 U.S.C. § 1956. The $667,600.00 laundered in Count 9 was part of a series of transactions designed to launder $1,305,300.00 in taxable income of Truck Stop Gaming, Ltd.

37. Defendants Cleveland and Goodson were both convicted, after trial by jury, of Count 10 of the Superseding

Indictment, which charged each defendant with money laundering $370,160.00 in violation of 18 U.S.C. § 1956. The $370,160.00 involved in Count 10 was part of a series of transactions designed to launder $1,305,300.00 in taxable income of Truck Stop Gaming, Ltd.

38. Defendant Goodson was convicted, after trial by jury, of Count 11 of the Superseding Indictment, which charged Goodson with money laundering $412,024.68 in violation of 18 U.S.C. § 1956. The $412,024.68 involved in Count 11 was part of a series of transactions designed to launder $1,305,300.00 in taxable income of Truck Stop Gaming, Ltd.

39. Defendants Cleveland and Goodson were both convicted, after trial by jury, of Count 12 of the Superseding Indictment, which charged each defendant with money laundering $412,024.68 in violation of 18 U.S.C. § 1956. The $412,024.68 involved in Count 12 was part of a series of transactions designed to launder $1,305,300.00 in taxable income of Truck Stop Gaming, Ltd.

CONCLUSIONS OF LAW:

1. In order to forfeit property under 18 U.S.C. § 1963, the Government must prove beyond a reasonable doubt a violation of Section 1962 and a relationship between that violation and the property alleged to be forfeitable. *See United States v. Pelullo*, 14 F.3d 881, 901 (3d Cir. 1994), *rev'd on other grounds*, 105 F.3d 117 (3d Cir. 1997) (analyzing Congressional intent concerning the burden of proof in Section 1963 forfeiture cases).

2. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that defendants Cleveland and Goodson formed an enterprise of themselves. Truck Stop Gaming, Ltd., Truck Stop Gaming, Inc., and O'Aces Video Poker Lounge, within the meaning of 18 U.S.C. § 1961(4), that is, a group of individuals and entities associated in fact, although not a legal entity, which were engaged in, and the activities of which affected interstate commerce.

3. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that the affairs of the enterprise described in ¶ 7 were conducted through a "pattern of racketeering activity," as that term is defined in 18 U.S.C. § 1961(5). The pattern of racketeering activity consisted of acts of mail fraud, money laundering, bribery, and interstate communications in aid of racketeering.

4. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that the enterprise described in paragraph 2 of this section was dedicated to the development and operation of video poker establishments at truck stops throughout the State of Louisiana.

5. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that Goodson and Cleveland had an interest in Truck Stop Gaming, Ltd., Truck Stop Gaming, Inc., and O'Aces Video Poker Lounge which they acquired and/or maintained through violations of 18

U.S.C. § 1962. These interests are forfeitable to the United States pursuant to 18 U.S.C. § 1963(a)(1).

6. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that the proceeds of Truck Stop Gaming, Ltd. from July 1994 through August 1995 were "interests" in the enterprise "acquired or maintained in violation of Section 1962." 18 U.S.C. § 1963(a)(1) (1997). Said proceeds include $3,145,278.04 in United States currency and all interest and proceeds traceable thereto. Said proceeds are forfeitable to the United States pursuant to 18 U.S.C. § 1963(a)(1). *See United States v. Faulkner*, 17 F.3d 745, 775 (5th Cir.), *cert denied sub nom, Blain v. United States*, 513 U.S 1056, 115 S. Ct. 663, 130 L. Ed. 2d 598 (1994), *cert. denied sub nom, Toler v. United States*, 513 U.S. 1056, 115 S. Ct. 663, 130 L. Ed. 2d 598 (1994), *cert. denied sub nom, Formann v. United States*, 513 U.S. 1056, 115 S. Ct. 663, 130 L. Ed. 2d 598 (1994) (allowing forfeiture of proceeds received by defendants' family members and proceeds received by defendants' corporations pursuant to subsection (a)(1) of Section 1963).

7. The net proceeds, not the gross proceeds of Truck Stop Gaming, Ltd., are the relevant figure for forfeiture under the facts of this case. *See United States v. Riley*, 78 F.3d 367, 371 (8th Cir. 1996); *United States v. Elliott*, 727 F. Supp. 1126, 1128 (N.D. Ill. 1989).

8. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that Goodson used his interests in SMFM Management Corporation; Slidell Union 76 Auto/Truck Plaza, Inc.; and Slidell Motel, Inc. to carry on

the affairs of the enterprise. Goodson's interests in SMFM Management Corporation; Slidell Union 76 Auto/Truck Plaza, Inc.; and Slidell Motel, Inc. afforded him a source of influence over the racketeering enterprise and are forfeitable to the United States pursuant to 18 U.S.C. § 1963(a)(2). *See, e.g., United States v. Anguilo*, 897 F.2d 1169, 1214 (1st Cir. 1990), *cert. denied*, 498 U.S. 845 (1990); *United States v. Zielie*, 734 F.2d 1447, 1459 (11th Cir. 1984), *cert. denied*, 469 U.S. 1189 (1985).

9. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that Cleveland and Goodson controlled the proceeds of Truck Stop Gaming, Ltd. described above in paragraph 6 of the Conclusions of Law and used those proceeds to further the affairs of the enterprise from July 1994 through August 1995. The proceeds therefore afforded Cleveland and Goodson a source of influence over the enterprise and are forfeitable pursuant to 18 U.S.C. § 1963(a)(2).

10. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that defendants Cleveland and Goodson have an interest in, security of, claims against, and property and contractual rights in Truck Stop Gaming, Ltd.; Truck Stop Gaming, Inc.; and the O'Aces Video Poker Lounge, which interest provided Cleveland and Goodson with a zone of influence over the operations of the enterprise and is forfeitable to the United States pursuant to 18 U.S.C. § 1963(a)(2). In addition, as these entities were part of the RICO enterprise

found in violation of 18 U.S.C. § 1962(c), they are forfeitable in their entirety. *See United States v. Porcelli*, 865 F.2d 1352, 1364 (2d Cir. 1989), *cert. denied*, 493 U.S. 810 (1989).

11. Based upon the jury's verdict and the evidence in the record from the criminal trial, the Government proved beyond a reasonable doubt that defendants Cleveland and Goodson controlled the disposition of the proceeds of the enterprise. The Government further proved beyond a reasonable doubt that defendants Cleveland and Goodson directly or indirectly obtained the proceeds of Truck Stop Gaming, Ltd. (d/b/a/ O'Aces Video Poker Lounge) described above in paragraph 6 of the Conclusions of Law. Said proceeds and all interest and proceeds traceable thereto are therefore forfeitable pursuant to 18 U.S.C. § 1963(a)(3).

12. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

the United States is entitled, pursuant to 18 U.S.C. § 1963(m) to forfeit any other property of the defendants

up the value of the above forfeitable property. *See* 18 U.S.C. § 1963(m) (1997).

13. 18 U.S.C. § 1963(a) provides, in pertinent part, that:

> (a) whoever violates any provision of section 1962 of this chapter . . . shall forfeit to the United States, irrespective of any provision of State law –
>
> (1) any interest the person has acquired or maintained in violation of section 1962;
>
> (2) any –
>
> (A) interest in; (B) security of; (C) claim against; or (D) property or contractual right of any kind affording a source of influence over;
>
> any enterprise which the person has established, operated, controlled, conducted, or participation in the conduct of, in violation of section 1962; and
>
> (3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962. . . .
>
> The court . . . shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection.

18 U.S.C. § 1963(a) (1997).

14. The provisions of 18 U.S.C. § 1963(a) are mandatory. Once the elements of forfeiture under 18 U.S.C. § 1963(a) are established, the violator of the Racketeer Influenced

and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, must forfeit the relevant interests, securities, claims, contractual rights, and/or properties. The finder of fact has no discretion in the matter. *See* 18 U.S.C. § 1963(a) (1997); *Faulkner*, 17 F.3d at 775.

15. The term "interest," as used in 18 U.S.C. § 1963(a), has been defined by the Supreme Court as "[t]he most general term that can be employed to denote a right, claim, title or legal share in something." *Russello v. United States*, 464 U.S. 16, 21, 104 S. Ct. 296, 299, 78 L. Ed. 2d 17 (1983) (quoting *Black's Law Dictionary 729* (5th ed., 1979)). The term is defined broadly and comprehends all forms of real and personal property, including money, profits and proceeds of the illegal enterprise. *Id.*

16. Congress selected the broad term "interest" to describe the things subject to forfeiture under 18 U.S.C. § 1963(a) because "Congress did not wish the forfeiture provision of Section 1963(a) to be limited by rigid and technical definitions drawn from other areas of the law" and because "it was fully consistent with the pattern of the RICO statute in utilizing terms and concepts of breadth." *Russello*, 464 U.S. at 21, 104 S. Ct. at 299-300; *see also Faulkner*, 17 F.3d at 774; *United Stats v. Neapolitan*, 791 F.2d 489, 495 (7th Cir.), *cert. denied*, 479 U.S. 939, 107 S. Ct. 421, 93 L. Ed. 2d 371 (1986) (noting that RICO must be liberally construed to effectuate its remedial purposes).

17. Defendants argue that a "but for" test applies to test forfeitability, *i.e.*, that the Government must show that proceeds of an enterprise would not have been acquired "but for" the defendants' racketeering activity. A number of courts in other circuits have applied such a "but for"

test. *See, e.g., United States v. Angiulo*, 897 F.2d 1169 (1st Cir.), *cert. denied*, 498 U.S. 845, 111 S. Ct. 130, 112 L. Ed. 2d 98 (1990) (applying "but for" test to proceeds or profits but not to interest in the enterprise itself); *United States v. Porcelli*, 865 F.2d 1352 (2d Cir.), *cert. denied*, 493 U.S. 810, 110 S. Ct. 53, 107 L. Ed. 2d 22 (1989) (forfeitures of property "outside" of an enterprise whose affairs are conducted in violation of 18 U.S.C. § 1962(c) are subject to "but for" test). However, the Fifth Circuit does not apply this test and has apparently rejected it. *See Faulkner*, 17 F.3d at 774-75.

18. In *Faulkner*, the Fifth Circuit upheld forfeiture of proceeds traceable only to the defendants' families and the defendants' companies and not to the defendants themselves. *Id.* Moreover, the Court cited with approval *United States v. BCCI Holdings, (Luxembourg), S.A.*, 795 F.Supp. 477, 480 (D.D.C. 1992), for the proposition that the term "interest" in Section 1963(a) includes the assets of a racketeering corporation's alter ego. In any event, the Court finds that there was sufficient evidence that the proceeds of Truck Stop Gaming, Ltd. described above were earned and/or maintained through the overall pattern of racketeering activity of the defendants to mandate forfeiture of those proceeds. *See also United States v. Houlihan*, 92 F.3d 1271 (1st 1996), *cert. denied*, ___ U.S. ___, 117 S. Ct. 963, 136 L. Ed. 2d 849 (1996) (allowing forfeiture of property put in defendant's uncle's name because the defendant was found to be the "de facto" owner).

19. Read as a whole, the superseding indictment gave the defendants sufficient notice that the monies received by Truck Stop Gaming, Ltd. from July 1994 through August 1995 were subject to forfeiture pursuant to 18

U.S.C. §§ 1963(a)(1), 1963(a)(2), and 1963(a)(3). *See* Superseding Indictment at 41-43. The Notice of Racketeering Forfeiture in the superseding indictment explicitly incorporates all of the allegations of Counts 1 and 2 of the superseding indictment. Moreover, while the Notice of Racketeering Forfeiture lists some specific "interests" to be forfeited under each subsection of Section 1963(a), it explicitly states that the lists are intended to be illustrative and not exhaustive. Thus, it is of no importance that the proceeds were not explicitly listed in the sections of the Notice of Racketeering Forfeiture covering subsections (a)(1) and (a)(2). *See United States v. Cauble*, 706 F.2d 1322, 1347 (5th Cir. 1983), *cert. denied*, 465 U.S. 1005, 104 S. Ct. 996, 79 L. Ed. 2d 229 (1984) ("barebones pleading" suffices in RICO forfeiture cases "so long as it puts the defendant on notice that the government seeks forfeiture and identifies the assets subject to forfeiture with sufficient specificity to permit the defendant to marshal evidence in their defense"); *United States v. Peacock*, 654 F.2d 339, 351 (5th Cir. 1981), *vacated in part on other grounds*, 686 F.2d 356 (5th Cir. 1982), *cert. denied*, 464 U.S. 965, 104 S. Ct. 404, 78 L. Ed. 2d 344 (1983) (indictment read as whole to determine its meaning and sufficiency of notice in forfeiture cases).

20. RICO forfeiture is the equivalent of a fine for purposes of the Eighth Amendment's prohibition against imposing "excessive fines." *Alexander v. United States*, 509 U.S. 544, 558, 113 S. Ct. 2766, 2775, 125 L. Ed. 2d 441 (1993); *United States v. Delgado*, 959 F. Supp. 1523, 1526 (S.D. Fla. 1997). The forfeiture in this case does not contravene the Eighth Amendment as it is keyed to the magnitude of the defendants' criminal enterprise. *See*

Alexander, 509 U.S. at 558-59, 113 S. Ct. at 2775-76 (fine must be "grossly disproportionate" to crime to violate Eighth Amendment); *United States v. Tunnell*, 667 F.2d 1182, 1188 (5th Cir. 1982) (Section 1963's forfeiture measures are constitutional under the Eighth Amendment when keyed to the magnitude of the enterprise); *Delgado*, 959 F. Supp. at 1526-27. The evidence showed that defendants were part of and conspired to be part of an enterprise which was dedicated to the development and operation of video poker truck stops throughout the State of Louisiana and which used and conspired to use mail fraud, money laundering and bribery to achieve this end. The Court does not find the forfeiture to be excessive in this case.

21. The defendants are jointly and severally liable for all of the above-listed property or other interests forfeitable under Section 1963(a). *See United States v. Masters*, 924 F.2d 1362, 1369-70 (7th Cir.), *cert. denied*, 500 U.S. 919, 111 S.Ct. 2019, 114 L.Ed.2d 105 (1991); *Fleischhauer v. Feltner*, 879 F.2d 1290, 1301 (6th Cir. 1989), *cert. denied*, 493 U.S. 1074, 110 S.Ct. 1122, 107 L.Ed.2d 1029 (1990); *United States v. Benevento*, 836 F.2d 129, 130 (2d Cir. 1988); *United States v. Caporale*, 806 F.2d 1487, 1506-08 (11th Cir. 1986), *cert. denied sub nom, Gopman v. United States*, 482 U.S. 917, 107 S. Ct. 3191, 96 L. Ed. 2d 679 (1987), *cert. denied*, 483 U.S. 1021, 107 S. Ct. 3265, 97 L. Ed. 2d 763 (1987) (imposition of joint and several liability in forfeiture order upon RICO co-conspirators necessary to effectuate the purpose of Section 1963). The Court finds that the funds, interests, and properties obtained and used by defendant Goodson in connection with his violations of 18 U.S.C. § 1962 were reasonably foreseeable to defendant Cleveland and that

the funds, interests, and properties obtained and used by defendant Cleveland in connection with his violations of 18 U.S.C. § 1962 were reasonably foreseeable to defendant Goodson.

22. The doctrine of collateral estoppel, which applies to successive actions, does not preclude a finding of forfeiture of the $3,145,278.04 of proceeds of Truck Stop Gaming, Ltd. (d/b/a O'Aces Video Poker Lounge), as argued by defendants. It is well settled under Fifth Circuit law that "[c]ollateral estoppel does not apply to the inconsistency of a verdict returned in a single trial." *United States v. Fesler,* 781 F.2d 384, 390 (5th Cir.), *cert. denied,* 476 U.S. 1118, 106 S. Ct. 1977, 90 L. Ed. 2d 661 (1986); *see also United States v. Barrilleaux,* 746 F.2d 254, 256 (5th Cir. 1984); *United States v. Caucci,* 635 F.2d 441, 448 (5th Cir.), *cert. denied,* 454 U.S. 831, 102 S. Ct. 128, 70 L. Ed. 2d 108 (1981). Moreover, even if collateral estoppel principles did apply, the Court would still not be precluded from finding that forfeiture of the $3,145,278.04 of proceeds of Truck Stop Gaming, Ltd. (d/b/a O'Aces Video Poker Lounge) was required by law. While the jury acquitted defendants Cleveland and Goodson of conducting an illegal gambling business (Count 7), they also convicted defendants of a mail fraud scheme to fraudulently obtain Truck Stop Gaming's licenses. The elements of the two offenses are not identical. Even if collateral estoppel principles did apply, this Court would be precluded only from finding RICO forfeiture on the basis of a RICO violation with conducting an illegal gambling business as a predicate act. It would not be precluded from finding forfeiture on other grounds.

23. Pursuant to 18 U.S.C. § 982(a)(1), any person who is convicted of money laundering in violation of 18 U.S.C. § 1956 is required to forfeit to the United States:

> any property, real or personal, involved in [a transaction or attempted transaction in violation of section 1956 and 982 of Title 18], or any property traceable to such property.

18 U.S.C. § 982(a)(1) (1997).

24. The provisions of 18 U.S.C. § 982(a)(1) are mandatory. Once a person has been convicted of money laundering pursuant to 18 U.S.C. § 1956, Section 982(a) requires the violator to forfeit the property involved in the offense or any property traceable to such property. The finder of fact has no discretion in the matter. *See* 18 U.S.C. § 982(a)(1) (1997); *United States v. Tencer*, 107 F.3d 1120, 1135 (5th Cir. 1997) (noting the mandatory nature of the forfeiture provisions of Section 982).

25. The phrase "any property, real or personal, involved" in a transaction or attempted transaction in violation of sections 1956 and 982 of Title 18, includes:

a. The money or other property laundered;

b. Any property traceable to such property.

26. The property being laundered includes any property that was the subject of the financial transaction that was the basis for any money laundering charge for which defendants Cleveland and Goodson have been found guilty. *See United States v. All Monies ($477,048.62) In Account No. 90-3617-3, Israel Discount Bank, New York, New York*, 754 F. Supp. 1467 (D. Hawaii 1991) (civil forfeiture case construing identical language in 18 U.S.C. § 981).

27. Money laundering Counts 8 through 12 involved a series of transactions designed to launder $1,305,300.00. The Court finds that the amount of property "involved in" Counts 8 through 12 for purposes of 18 U.S.C. § 982(a)(1) is $1,305,300.00.

28. As a result of his convictions on Counts 5, 6, 8, 9, 10, 12, 13 and 15 of the superseding indictment, the defendant Carl W. Cleveland is liable in forfeiture to the United States government in the amount of $1,305,300.00 in United States currency pursuant to 18 U.S.C. § 982(a). Since the money laundering transactions were also part of the pattern of racketeering activity for defendant Cleveland's RICO offense, these amounts are alternatively forfeitable under 18 U.S.C. § 1963(a).

29. As a result of his convictions on Counts 5, 6, 8, 9, 10, 11 and 12 of the superseding indictment, the defendant Fred H. Goodson is liable in forfeiture to the United States government in the amount of $1,305,300.00 in United States currency pursuant to 18 U.S.C. § 982(a). Since the money laundering transactions were also part of the pattern of racketeering activity for defendant Goodson's RICO offense, these amounts are alternatively forfeitable under 18 U.S.C. § 1963(a).

30. However, because the $1,305,300 represented the next taxable income for Truck Stop Gaming for 1994, a portion of this amount is already included in the proceeds of the RICO forfeiture calculated under 18 U.S.C. § 1963(a), which included proceeds of Truck Stop Gaming beginning in July 1994. Records of Truck Stop Gaming reveal that the first six months of 1994 produced 43.6% of the proceeds for the year 1994. To eliminate any double

counting of the same proceeds subject to forfeiture, the Court reduces the $1,305,300 in 1994 taxable income subject to the money laundering forfeiture by 56.4% to produce a forfeitable amount of $569,110. Accordingly, $569,110 is forfeitable by Fred Goodson and Carl Cleveland under 18 U.S.C. § 982(a).

31. 18 U.S.C. § 982 provides for forfeiture of substitute assets under various circumstances set forth in 21 U.S.C. § 853(p), the CCE criminal forfeiture provision, which is incorporated in 18 U.S.C. § 982(b)(1)(A). *See* 18 U.S.C. § 982(b)(1)(A) (1997).[3] 21 U.S.C. § 853(p) provides for forfeiture of substitute property of the defendant if "as a result of any act or omission of the defendant," the forfeitable property:

> (1) cannot be located upon the exercise of due diligence;
>
> (2) has been transferred or sold to, or deposited with, a third party;
>
> (3) has been placed beyond the jurisdiction of the court;
>
> (4) has been substantially diminished in value; or

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[3] 18 U.S.C. § 982(b)(1)(A) provides that: "Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed – in the case of a forfeiture under subsection (a)(1) . . . of this section, by subsections (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 853).").

(5) has been commingled with other property which cannot be divided without difficulty.

21 U.S.C. § 853(p) (1997).

32. Defendants Cleveland and Goodson have each transferred or deposited all or part of the money involved in the money laundering offenses to third parties – the I.R.S. and Truck Stop Gaming, Ltd. *See* Carl W. Cleveland's Post Hearing Brief at 18-19; Defendant Fred Goodson's Memorandum Regarding Forfeiture Issues at 5. Accordingly, the Government is entitled to forfeiture of "any other property of the defendant up to the value of the property" found forfeitable because of the money laundering offenses. 21 U.S.C. § 853(p) (1997).

Accordingly,

IT IS ORDERED that defendant Carl W. Cleveland forfeit his interests in Truck Stop Gaming, Ltd.; Truck Stop Gaming, Inc.; and O'Aces Video Poker Lounge to the United States pursuant to 18 U.S.C. § 1963(a)(1) and (a)(2).

IT IS FURTHER ORDERED that defendant Carl W. Cleveland forfeit to the United States $3,145,278.04 in United States currency pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3).

IT IS FURTHER ORDERED that to the extent that, as a result of any act or omission of defendant Cleveland, any of the above described property forfeitable under 18 U.S.C. § 1963(a) cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third person; has been placed beyond the

jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be subdivided without difficulty, the defendant Carl Cleveland shall be required to forfeit to the United States any other property owned by him up to the value of the forfeitable property.

IT IS FURTHER ORDERED that defendant Carl Cleveland forfeit to the United States an additional $569,110.00 in United States currency pursuant to 18 U.S.C. §982(a).

IT IS FURTHER ORDERED that to the extent that, as a result of any act or omission of defendant Cleveland, any of the $569,110.00 in United States currency forfeitable under 18 U.S.C. § 982(a) cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third person; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be subdivided without difficulty, the defendant Carl Cleveland shall be required to forfeit to the United States any other property owned by him up to the value of the forfeitable property.

IT IS FURTHER ORDERED that defendant Fred H. Goodson forfeit his interests in Truck Stop Gaming, Ltd.; Truck Stop Gaming, Inc.; O'Aces Video Poker Lounge to the United States pursuant to 18 U.S.C. § 1963(a)(1) and (a)(2).

IT IS FURTHER ORDERED that defendant Fred H. Goodson forfeit his interests in SMFM Management Corporation; Slidell Union 76 Auto/Truck Plaza, Inc.; and

Slidell Motel, Inc. to the United States pursuant to 18 U.S.C. § 1963(a)(2).

IT IS FURTHER ORDERED that defendant Fred H. Goodson forfeit to the United States $3,145,278.04 in United States currency pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3).

IT IS FURTHER ORDERED that to the extend that, as a result of any act or omission of defendant Goodson, any of the above described property forfeitable under 18 U.S.C. § 1963(a) cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third person; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be subdivided without difficulty, the defendant Fred Goodson shall be required to forfeit to the United States any other property owned by him up to the value of the forfeitable property.

IT IS FURTHER ORDERED that defendant Fred Goodson forfeit to the United States an additional $569,110.00 in United States currency pursuant to 18 U.S.C. § 982(a).

IT IS FURTHER ORDERED that to the extent that, as a result of any act or omission of defendant Goodson, any of the $569,110.00 in United States currency forfeitable under 18 U.S.C. § 982(a) cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third person; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with

other property which cannot be subdivided without difficulty, the defendant Fred Goodson shall be required to forfeit to the United States any other property owned by him up to the value of the forfeitable property.

New Orleans, Louisiana, this 26th day of August, 1997

/s/ Sarah Vance
SARAH S. VANCE
UNITED STATES DISTRICT
JUDGE

18 U.S.C. § 1963

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law –

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any –

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United

States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes –

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title and interest in property described in subsection (a) vests it the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (*l*) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

* * *

(*l*)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged

an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstance of the petitioner's right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the

record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that –

> **(A)** the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
>
> **(B)** the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order or forfeiture and may warrant good title to any subsequent purchaser or transferee.

* * *